

Notice of Agency Rule-making Proposal

AGENCY: Department of Professional and Financial Regulation, Office of Licensing and Registration,
State Board of Funeral Service

RULE TITLE OR SUBJECT:

Chapter 1Definitions (amended)
Chapter 2Meetings and Officers of the Board (repealed)
Chapter 2-AAdvisory Rules (new)
Chapter 3Educational Requirements for Licensure (amended)
Chapter 4Examination and Application for Licensure as a Practitioner of Funeral
Service (repealed)
Chapter 5Practitioner Trainees (amended)
Chapter 6Reciprocal Agreements (repealed)
Chapter 6-APathways to Licensure as a Practitioner of Funeral Service (new)
Chapter 7Funeral Establishments (amended)
Chapter 8Health and Safety Standards (amended)
Chapter 9Complaints and Inspections (repealed)
Chapter 10General Rules / Scope of Practice (amended)
Chapter 11Annual Renewal; Continuing Education; Inactive Status (amended)
Chapter 12Transportation of Human Remains (amended)
Chapter 13Disinterment (amended)
Chapter 14Temporary Storage (amended)
Chapter 15Code of Ethics (amended)
Chapter 16Prearranged Funerals – Mortuary Trust Agreements (amended),
including Guaranteed Service Mortuary Trust Agreement (amended),
Credit for Service Mortuary Trust Agreement (amended) and Life
Insurance Mortuary Trust Agreement (new)

PROPOSED RULE NUMBER: 98-P

(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE):

CONCISE SUMMARY (UNDERSTANDABLE BY AVERAGE CITIZEN): The proposed rules: (a) describe the manner in which the board will consider and act upon requests for advisory rulings, (b) require an Associate Degree or higher for licensure as a practitioner of funeral service, (c) recognize trainee hours or an entire practitioner traineeship completed in another jurisdiction, (d) shorten the maximum duration of a practitioner traineeship from 8 years to 4 years, (e) prohibit a person from working as a practitioner trainee following successful completion of a practitioner traineeship, (f) define a "branch" of a funeral home, (g) define a change in ownership of a funeral home as the sale or transfer of the entire ownership of the home, (h) require every funeral home to have a licensee in charge who is responsible for the establishment's compliance with the funeral laws and rules, (i) provide for an orderly transition in licensure upon a change of ownership, (j) require a funeral home to notify holders of mortuary trust agreements of a change in ownership and their option to request the resignation of the trustee and designate a different funeral home as trustee, (k) provide for an orderly transition in licensed operation upon the death, incapacity, resignation or unavailability of a licensee in charge, (l) describe with specificity the tasks that may and may not be performed by funeral attendants, (m) require a funeral home to disclose to customers whether or not rental caskets are offered, (n) provide for inactive status licensure, (o) clarify that licensees shall treat all persons with respect, dignity and courtesy regardless of race, religion, national origin, gender orientation, education, financial status or cause of death, (p) define a life insurance mortuary trust agreement, (q) reflect a change in name from "guaranteed price mortuary trust agreement" to "guaranteed service mortuary trust agreement," (r) emphasize that a funeral director has the

obligations of a trustee with respect to mortuary trust funds or the insurance policy and policy proceeds, (s) provide for replacing a credit for service mortuary trust agreement with a guaranteed service mortuary trust agreement, (t) state that no fee may be charged by a licensee in connection with a life insurance mortuary trust agreement, and (u) make various changes that reflect the availability of the new life insurance mortuary trust.

The proposed rules also amend the Guaranteed Service Mortuary Trust Agreement and Credit for Service Mortuary Trust Agreement attached to this chapter and promulgate a new Life Insurance Mortuary Trust Agreement. The amendments to the Guaranteed Service and Credit for Service Mortuary Trust Agreements: (v) permit the parties to now specify both a representative of the payor and an alternate contact person, if desired, (w) set forth a funeral home's obligation to make select mortuary trust records available for inspection by the payor without prior notice, and make complete records available for inspection within three business days, (x) state a funeral home's obligation to return all mortuary trust funds to the payor in the event that the home is unable to perform its obligations under the trust, (y) change the circumstances under which a funeral home can resign as trustee, (z) require a funeral home to send an annual report to the payor and beneficiary of each mortuary trust it holds, (aa) require a funeral home to furnish the payor of a mortuary trust with a final report within 30 days of rendition of services, and (bb) explicitly state that the validity, construction and administration of the trust created by a mortuary trust agreement will be governed by The Maine Uniform Trust Code, 18-B MRSA §101, et seq. (cc) The amendments to the Guaranteed Service Mortuary Trust Agreement clarify options for treatment of cash advance items and require that the trust be fully funded at its inception. (dd) The amendments to the Credit for Service Mortuary Trust Agreement include more specific instructions for disposition of any excess trust funds following rendition of services.

The statement of economic impact on small business required by 5 MRSA §8052(5-A) may be obtained from the agency contact person.

THIS RULE WILL ☐ WILL NOT ☒ HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 5 MRSA §§8051 and 9001(4); 32 MRSA §§1401(2), 1451 and 1501

PUBLIC HEARING):

(IF ANY, GIVE DATE, TIME, LOCATION)

May 12, 2009, 9:00 a.m., Department of Professional and Financial Regulation, 122 Northern Avenue, Gardiner, Maine

DEADLINE FOR COMMENTS: May 22, 2009

AGENCY CONTACT PERSON: Penny Vaillancourt, Board Administrator

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PROPOSED RULE AVAILABLE ON LINE AT: www.maine.gov/professionallicensing

Please approve bottom portion of this form and
assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
Authorized signature

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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**Board of Funeral Service
Rules Revision
Proposed Rules**

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 1 DEFINITIONS

SUMMARY: This Chapter sets forth definitions of terms used in the rules of the State Board of Funeral Service.

1. Definitions

1. Alternative ~~Container~~container. “Alternative container” means an unfinished wood box or other non-metal receptacle without ornamentation or a fixed interior lining, often made of fiberboard, pressed wood or composition materials, ~~and generally lower in cost than~~ easkets which is designed for the encasement of human remains.

2. Authorized ~~Person~~person. “Authorized person,” ~~means any person as~~ defined in 22 MRSA §2846 and referenced in 22 MRSA §2843, means other than a practitioner of funeral service a member of the immediate family of the deceased, the domestic partner of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume the responsibility or by the domestic partner of the deceased if the domestic partner does not wish to assume the responsibility or, in the absence of immediate family or a known domestic partner, a person authorized in writing by the deceased. For purposes of the board’s rules, “domestic partner” means one of two unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other’s welfare.

~~3. Board. “Board” means the State Board of Funeral Service, as defined in 32 MRSA §1451.~~

~~3-A. Branch. “Branch” means a chapel, sales office or other facility utilized by a funeral establishment for any aspect of the practice of funeral service whether or not the embalming of human remains takes place on the premises.~~

4. Casket. “Casket” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

~~4-A. Change of ownership. “Change of ownership” means the sale or transfer of the entire ownership of a funeral home.~~

~~4-B. Credit for service. “Credit for service” refers to a mortuary trust agreement in which the mortuary trust proceeds are applied to the cost of funeral goods and services selected, but are not guaranteed by the funeral home to cover those costs in full.~~

[NOTE: For a more complete explanation of a credit for service mortuary trust agreement, see Chapter 16, Section 2(1) of the board's rules.]

5. Embalming. “Embalming” means the injection, both arterially and into the body cavities, of an amount of approved embalming fluid at least the equivalent of 10% of the body weight. An approved embalming fluid shall have disinfecting capacities at least the equivalent of 5% of formaldehyde gas when diluted in accordance with the manufacturer’s specifications.

6. Funeral ~~Attendant~~attendant. “Funeral attendant” means ~~any-a~~ person who is ~~employed part-or full-time in funeral service, is engaged in transporting human remains and is not licensed under this chapter~~ licensed to perform the duties described in Chapter 10, §4 of the board’s rules under the supervision of a practitioner of funeral service.

7. Funeral ~~Director~~director. “Funeral director” means a person engaged in the practice of funeral ~~service-directing~~ as presently known, whether under the title of “funeral director,” “mortician,” “undertaker” or otherwise.

7-A. Guaranteed service. “Guaranteed service” refers to a mortuary trust agreement in which the funeral home guarantees that the mortuary trust proceeds will pay in full for the funeral goods and services selected, with the possible exception of cash advance items.

[NOTE: For a more complete explanation of a guaranteed service mortuary trust agreement, see Chapter 16, Section 2(2) of the board's rules.]

8. Human ~~Remains~~remains. “Human remains” means a deceased person or any part thereof.

9. Licensee in charge. “Licensee in charge” means the practitioner of funeral service who is in charge of a funeral establishment

10. National ~~Conference-Board~~ Examination. “National ~~Conference-Board~~ Examination” means the examination administered ~~by the International Conference of Funeral Service Examining Boards, Inc. and which is~~and graded by the International Conference of Funeral Service Examining Boards, Inc. or a successor or other organization approved by the board.

10-A. Payee. “Payee” means the funeral home that serves as trustee of a credit for service or guaranteed price mortuary trust created by a mortuary trust agreement. The funeral home may be an individual, firm, association, partnership or corporation.

10-B. Payor. “Payor” means the person who funds a credit for service or guaranteed service mortuary trust, or the duly appointed legal representative of such person.

11. Practical ~~Examination~~examination. “Practical ~~Examination~~examination” means actual embalming of human remains by an applicant in the presence of a member of the ~~Board~~board.

12. Practitioner of ~~Funeral Service~~funeral service. “Practitioner of funeral service” means any person engaged in the practice of funeral service as defined in 32 MRSA §1400(5),

including but not limited to embalmers and funeral directors, whether self-employed or employed by others.

12-A. Practitioner trainee. "Practitioner trainee," as defined in 32 MRSA §1400(6), means a person licensed by the board for the purpose of acquiring supervised practice experience within the Registered Apprenticeship Division.

13. Registered Apprenticeship Division. "Registered Apprenticeship Division" means the Department of Labor, Bureau of Employment Services, Registered Apprenticeship Division.

13-A. Settlor. "Settlor" means the person who creates a mortuary trust funded by an existing life insurance policy as described in Chapter 16, §2(3) of the Board's rules.

14. State Law and Rule Examination. "State Law and Rule Examination" means the written examination on the State laws and rules promulgated by the Board relating to the practice of funeral service in the State of Maine.

STATUTORY AUTHORITY: 32 MRSA §§1451 and 1501

EFFECTIVE DATE:

December 20, 1979 - under the title "Rules of Maine State Board of Funeral Service,"
amended Sections 8 and 12

READOPTED:

December 28, 1979 - as "Rules of Maine State Board of Funeral Service"

AMENDED:

November 23, 1981

REPEALED AND REPLACED:

April 3, 1990 - as "Definitions." Other subject matter split off into separate chapters.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004 - character spacing only

~~02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

~~331 MAINE STATE BOARD OF FUNERAL SERVICE~~

~~Chapter 2 MEETINGS AND OFFICERS OF THE BOARD~~

~~SUMMARY: This Chapter describes the meeting procedures and officers of the Board.~~

- ~~1. Special meetings of the Board may be called by the Chair, or by a majority of the Board members, provided that written notice shall be mailed to all members of the Board at least seventy-two (72) hours before the scheduled time of meeting.~~
 - ~~2. The Board shall elect on an annual basis, by majority vote, a Chair and Vice Chair. Both officers shall serve a term of one year and may be re-elected.~~
 - ~~3. The Chair shall preside at all regular and special meetings. In the absence of the Chair, the Vice Chair shall act as Chair.~~
-

STATUTORY AUTHORITY: 32 MRSA §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Meetings of the Board." Previously the subject matter was Section 2 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Meetings and Officers of the Board"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION331 MAINE STATE BOARD OF FUNERAL SERVICEChapter 2-A ADVISORY RULINGS

SUMMARY: This chapter provides for the discretionary issuance of advisory rulings by the board.

1. Request and Consideration

Upon written request of any interested person, the board may issue an advisory ruling pursuant to 5 M.R.S.A. §9001 with respect to the applicability of any statute or rule it administers. Requests for advisory rulings must set forth in detail all facts pertinent to the question. The board may decline to issue an advisory ruling if the question is hypothetical, if there is insufficient information upon which to base a ruling, or for any other reason the board deems proper.

2. Response

The board shall acknowledge receipt of a request for an advisory ruling within 15 days after receipt. The board shall respond to every written request for an advisory ruling within 90 days of its receipt of the request, indicating whether or not a ruling will be issued by the board.

STATUTORY AUTHORITY: 5 M.R.S.A. §§ 8051, 9001(4)

EFFECTIVE DATE:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 3 EDUCATIONAL REQUIREMENTS FOR LICENSURE

SUMMARY: This chapter sets forth the educational requirements for licensure as a practitioner of funeral service.

Subchapter 1 (Associate or higher degree in funeral service optional)

1. Scope of subchapter 1

This subchapter applies to:

1. A person who is a registered practitioner trainee as of the effective date of this amendment; and
2. Any other person who files a complete application for licensure as a practitioner of funeral service prior to March 1, 2011.

2. ~~Requirements-Eligibility~~ for licensure

To be eligible for licensure as a practitioner of funeral service, an applicant for initial licensure shall meet all requirements set forth in 32 MRSA §1501 and shall satisfy the educational requirements of either ~~Section 2 or Section 3~~subsection 1 or subsection 2 below.

1. Receipt of an Associate Degree or higher from a ~~two-year~~ college of mortuary science accredited by the American Board of Funeral Service Education or a successor or other organization approved by the board, or

OR

2.
 - A. Successful completion of at least fifty (50) credit hours of study at a college of mortuary science accredited by the American Board of Funeral Service Education or a successor or other organization approved by the board, and
 - B. Successful completion of a sufficient number of college semester credit hours to entitle the applicant to admission as a member in good standing of the second year class of any college or university approved by a recognized accrediting authority, ~~provided, however, that such college~~

~~credits shall include courses in each of the following general areas of study:~~

~~(1)English;~~

~~(2)physical science;~~

~~(3)economics;~~

~~(4)sociology;~~

~~(5)public speaking; and~~

~~(6)contemporary religion or philosophy.~~

Subchapter 2 (Associate or higher degree in funeral service required)

3. Scope of subchapter 2

This subchapter applies to a person who files a complete application for licensure as a practitioner of funeral service on or after March 1, 2011 other than a person who is a registered practitioner trainee as of the effective date of this amendment.

1. To be eligible for licensure as a practitioner of funeral service, an applicant shall have an Associate Degree or higher from a program in funeral service accredited by the American Board of Funeral Service Education or a successor or other organization approved by the board.

STATUTORY AUTHORITY: 32 MRSA §§ 1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Educational Requirements." Previously the subject matter was Section 3 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

~~02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

~~331 MAINE STATE BOARD OF FUNERAL SERVICE~~

~~Chapter 4 EXAMINATION AND APPLICATION FOR LICENSURE AS A
PRACTITIONER OF FUNERAL SERVICE~~

~~SUMMARY: This Chapter outlines the type of examinations administered and other specific information pertaining to the examination and application process for persons applying for licensure as a practitioner of funeral service.~~

- ~~1. Application for examination and licensure as a practitioner of funeral service shall be made on a form provided by the Board. The applicant shall submit with the application:~~
 - ~~A. Academic transcripts showing satisfaction of the educational requirements contained in Chapter 3,~~
 - ~~B. A certificate of completion from the Registered Apprenticeship Division, as described in Chapter 5, §7,~~
 - ~~C. Documentation that the applicant has attained a minimum passing score of 75% on each of the major sections of the National Conference Examination (or its equivalent as determined by the Board), and~~
 - ~~D. The required license and examination fees.~~

~~A passing score on a major section of the National Conference Examination (or its equivalent) shall be recognized by the Board for the two year period following the date of the examination.~~
- ~~2. A person whose application has been approved by the Board shall appear before a member of the Board at a time and place designated by the Board for the purpose of taking the State Law and Rule Examination and the Practical Examination. If an applicant has a handicapping condition which would interfere with the ability to take either examination, the applicant may submit verification of the handicapping condition to the Board and request an alternative examination.~~
- ~~3. The minimum passing score on the State Law and Rule Examination and the Practical Examination is 75%. The Board shall notify an applicant in writing of the applicant's scores within thirty (30) days of an examination. A license shall be issued to an approved applicant who passes both examinations. A passing score on the State Law and Rule Examination or the Practical Examination shall be recognized by the Board for the two-year period following the date of the examination.~~

4. ~~An applicant who fails the State Law and Rule Examination or the Practical Examination may re take the examination following submission of a new application and examination fee to the Board. (The original license fee need not be repaid.)~~
 5. ~~An otherwise eligible applicant less than 18 years of age who has satisfied the educational requirements contained in Chapter 3 may take the required examinations. If the applicant successfully passes, the license shall issue once the applicant has attained the age of 18.~~
 6. ~~All written examination questions shall be the property of the Board, and must be returned to the Board by the Board member who conducted the examination. Completed examinations shall not leave the Board Office and may not be reviewed except by office staff and members of the Board.~~
-

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Examination." Previously the subject matter was Section 4 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Examination and Application for Licensure as a Practitioner of Funeral Service"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 5 PRACTITIONER TRAINEES

SUMMARY: This chapter describes the 2000-hour ~~apprenticeship~~ traineeship to be completed by practitioner trainees through the Registered Apprenticeship Division prior to application for licensure as a practitioner of funeral service.

1. Trainee Experience in Another Jurisdiction

Upon receiving from the applicant proof of ~~documentation of~~ licensure as a practitioner trainee ~~/ or~~ apprentice in another jurisdiction, the ~~Board~~ board may accept the determination made by the Registered Apprenticeship Division with respect to any partial or complete ~~waiver or acceptance of job training~~ recognition of the hours completed in the other jurisdiction.

2. Application

Application for ~~registration~~ licensure as a practitioner trainee ~~shall~~ must be made on a form provided by the ~~Board~~ board. The applicant shall submit the ~~required~~ fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees," with the application. The ~~Board~~ board shall approve the applications of qualified applicants and shall forward the names of the qualified applicants to the Registered Apprenticeship Division.

~~Prior to the start of the apprenticeship, the practitioner trainee shall appear before a member of the Board for an interview. The interview is not part of the application process and will have no effect on the application. The purposes of this interview are:~~

- ~~•To assure that the applicant understands the Board's basic requirements of licensure~~
- ~~•To assure that the applicant understands the program requirements of the Registered Apprenticeship Division for funeral service trainees~~
- ~~•To assure that the applicant understands the Board's expectations of trainees~~
- ~~•To discuss the applicant's background and the applicant's expectations of the training program and eventual licensure as a practitioner of funeral service.~~

3. Apprenticeship Agreement

Before the practitioner trainee enrolls with the Registered Apprenticeship Division, the trainee and the ~~funeral home where the apprenticeship is to take place~~ licensed

practitioner who will be supervising the trainee shall agree to follow the requirements of the ~~Division~~division and the requirements of the ~~Board~~board. The purpose of this agreement is to ensure that proper training is accomplished and that proper documentation of the training is created.

4. Termination or Change of Employment

1. Notice From Practitioner Trainee; New Agreement Required

~~When a practitioner trainee changes his/her current place of employment, the practitioner trainee shall notify the Board in writing within fifteen (15) business days of the name and location of the new funeral home and the responsible licensed practitioner. A practitioner trainee shall notify the board in writing of any termination or change of employment within ten (10) days of the termination or change. Notice of a change of employment must include the name and address of the new funeral home and the name of the new supervising practitioner. The new supervising practitioner must enter into the agreement required by Section 3 of this chapter prior to the accrual of any training hours recognizable under Section 5 of this chapter.~~

2. Notice From Supervising Licensed Practitioner

~~A supervising licensed practitioner shall notify the board in writing of any termination or change of employment of a practitioner trainee under the practitioner's supervision within ten (10) days of the termination or change.~~

5. Required Number of Hours

Each practitioner trainee ~~must~~shall ~~serve successfully complete~~ an apprenticeship of 2,000 on-the-job training hours at a licensed establishment. ~~The Board~~board will not recognize training hours that were earned prior to or outside of the trainee's enrollment with the Registered Apprenticeship Division except as described in Sections 1 and 10 of this chapter; nor will the ~~Board~~board recognize training hours earned in any branch of military service. ~~Effective January 1, 2002, the practitioner traineeship shall not be less than one (1) year nor greater than eight (8) years in duration, and must be successfully completed. Application for licensure as a practitioner of funeral service must be made within five (5) years following the completion of apprenticeship training; after five (5) years, the traineeship will no longer be recognized.~~

6. Duration of Traineeship

1. For Persons Registered Prior to Effective Date of New Amendments

For persons initially registered as practitioner trainees between January 1, 2002 and the day prior to the effective date of these amendments, the traineeship may not be less than one (1) year nor greater than eight (8) years in duration.

2. For Persons Registered On or After Effective Date of New Amendments

For persons initially registered as practitioner trainees on or after the effective date of these amendments, the traineeship may not be less than one (1) year nor greater than four (4) years in duration, except that the board may extend the duration of the traineeship in the event of unforeseeable circumstances of genuine hardship.

7. Certificate of Completion

The practitioner trainee shall request a certificate of completion from the Registered Apprenticeship Division upon successful completion of the traineeship. The Registered Apprenticeship Division shall send documentation of completion to the board.

8. Application for Licensure

Application for licensure as a practitioner of funeral service must be made within five (5) years following the completion of apprenticeship training; after five (5) years, the traineeship will not be recognized.

9. No Subsequent Work as Trainee

No person may work as a practitioner trainee following successful completion of a traineeship.

10. Alternate Recognition Process for Traineeship or Apprenticeship Completed in Another Jurisdiction

In lieu of a traineeship completed under the auspices of the Registered Apprenticeship Division, and in the absence of a determination from the Registered Apprenticeship Division pursuant to Section 1 of this chapter, the Board may recognize a traineeship completed in another jurisdiction upon demonstration by the applicant, and submission of such documents as the board may require, that the completed traineeship was substantially similar in nature to the traineeship described in this chapter. The hours, duration and recency provisions of this chapter apply to any such traineeship. The applicant is responsible for corroborating the number of hours served. Recognition by the board substitutes for the certificate of completion described in Section 7 of this chapter and required for licensure by Chapter 6-A, Section 2(1)(B) of the board's rules.

STATUTORY AUTHORITY: 32 MRSA §§ 1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Practitioner Trainee." Previously the subject matter was Section 5 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 18, 1997

REPEALED AND REPLACED:
October 29, 2001 - as "Practitioner Trainees"

~~02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

~~331 MAINE STATE BOARD OF FUNERAL SERVICE~~

~~Chapter 6 RECIPROCAL AGREEMENTS~~

~~SUMMARY: This Chapter describes procedures and requirements for licensure by reciprocal agreement.~~

- ~~1. The Board may, issue a reciprocal license for the practice of funeral service to a practitioner who is licensed in good standing in another jurisdiction. For purposes of this Chapter, an applicant for reciprocal licensure is licensed in good standing when:~~
 - ~~A. There are no pending or tabled investigations or disciplinary proceedings arising from the applicant's practice of funeral service in any jurisdiction where the applicant was ever licensed as a practitioner;~~
 - ~~B. The applicant's practice of funeral service is not under suspension, probation, supervision, or consultation or subject to any restrictions or limitations in any jurisdiction where the applicant was ever licensed as a practitioner;~~
 - ~~C. There are no outstanding sanctions against the applicant from closed disciplinary proceedings, regardless of whether such sanctions were contained in a consent agreement/consent order or an adjudicated decision or order; and~~
 - ~~D. The applicant does not present a history or pattern of disciplinary violations or other behavior sufficient to call into question the applicant's character, competence or fitness to practice.~~
- ~~2. An applicant for reciprocal licensure shall submit the following to the Board:~~
 - ~~A. Completed application form;~~
 - ~~B. The required license and examination fees;~~
 - ~~C. Proof that the applicant has been in active practice as a licensed practitioner of funeral service or its equivalent in another jurisdiction for at least the three (3) year period immediately preceding application in Maine, or has received the license from the other jurisdiction by meeting requirements substantially equivalent to those applicable in Maine;~~
 - ~~D. Verification of licensure status from any jurisdiction where the applicant is or previously has been licensed; and~~

- ~~E. Two letters of recommendation from licensed practitioners of funeral service in the applicant's home jurisdiction.~~
- ~~3. Upon approval of the application by the Board, the applicant shall be required to take the State Law and Rule Examination and achieve a minimum passing score of 75%. A license shall be issued to an approved applicant who passes the examination.~~
-

STATUTORY AUTHORITY: 32 MRSA §1451

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Reciprocity." Previously the subject matter was Section 6 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Reciprocal Requirements"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION331 MAINE STATE BOARD OF FUNERAL SERVICEChapter 6-A PATHWAYS TO LICENSURE AS A PRACTITIONER OF FUNERAL SERVICE

SUMMARY: This chapter sets forth the pathways to licensure as a practitioner of funeral service.

1. Pathways to Licensure

Applicants may qualify for licensure as a practitioner of funeral service in either of two ways:

1. Pathway 1: Initial Licensure

- A. Completing the education requirement contained in Chapter 3 of the board's rules;
- B. Completing a practice traineeship or its equivalent as described in Chapter 5 of the board's rules; and
- C. Achieving passing scores on the National Board Examination, State Law and Rule Examination, and Practical Examination as described in Section 2 of this chapter.

OR

2. Pathway 2: Licensure in Another State

- A. Licensure in another state, as described in Section 3(1) of this chapter; and
- B. Achieving a passing score on the State Law and Rule Examination, as described in Section 3(2) of this chapter.

2. Pathway 1: Initial Licensure1. Application and Fees; Passing Score on National Board Examination

Application for examination and licensure as a practitioner of funeral service must be made on forms provided by the board. The applicant shall submit with the application:

- A. Academic transcripts showing satisfaction of the educational requirements contained in Chapter 3 of the board's rules;

- B. A certificate of completion from the Registered Apprenticeship Division, as described in Chapter 5, Section 7 of the board's rules, including acceptance or recognition of trainee hours completed in another jurisdiction pursuant to Chapter 5, Sections 1 and 10 of the board's rules;
- C. Documentation that the applicant has attained a minimum passing score of 75% on each of the major sections of the National Board Examination, or its successor or equivalent; and
- D. The license and examination fees required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees."

All applications must be complete. Incomplete applications may be discarded by the board after one year from the date of the initial submission.

2. State Law and Rule Examination; Practical Examination

A person whose application has been approved by the board shall appear before a member of the board at a time and place designated by the board for the purpose of taking the Practical Examination. If an applicant has a handicapping condition which would interfere with the ability to take either examination, the applicant may submit verification of the handicapping condition to the board and request an alternative examination.

~~[NOTE: The State Law and Rule Examination is currently a paper and pencil test administered by the board at its office in Gardiner. The board may adopt a computer-based format for this examination in the future.]~~

An applicant shall achieve passing scores on the State Law and Rule Examination and the Practical Examination within one year from the date that the applicant's application was approved by the board. An applicant who fails an examination may re-take the examination following re-payment of the combined examination fee. The original license fee need not be repaid.

The minimum passing score on the State Law and Rule Examination and the Practical Examination is 75% on each. The board shall notify an applicant in writing of the applicant's scores within thirty (30) days of an examination. A license may be issued to an approved applicant who passes both examinations. A passing score on the State Law and Rule Examination or the Practical Examination will be recognized by the board for the two-year period following the date of the examination.

An otherwise-eligible applicant less than 18 years of age who has satisfied the educational requirements contained in Chapter 3 may take the required examinations. If the applicant passes the examinations, the license shall issue once the applicant attains the age of 18.

3. Pathway 2: Licensure in Another State

1. Application and Fees; License Verification

Application for licensure as a practitioner of funeral service must be made on forms provided by the board. The applicant shall submit with the application:

A. Proof that the applicant –

- (1) Has been in continuous active practice as a licensed practitioner of funeral service of another state for the 3-year period immediately preceding submission of the application to the board; or
- (2) Holds an active license to practice funeral service from another state that was obtained on the basis of license requirements that are substantially similar to the requirements of Maine law and these rules of the board.

B. Verification of licensure status and disciplinary history from every jurisdiction where the applicant is or previously has been licensed;

C. Two letters of recommendation from licensed practitioners of funeral service in the applicant's home jurisdiction; and

D. The license and examination fees required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees."

All applications must be complete. Incomplete applications may be discarded by the board after one year from the date of the initial submission.

2. State Law and Rule Examination

An applicant shall achieve a passing score on the State Law and Rule Examination within one year from the date that the applicant's application was approved by the board. An applicant who fails the examination may re-take the examination following re-payment of the ~~combined~~ examination fee. The original license fee need not be repaid.

~~[NOTE: The State Law and Rule Examination is currently a paper and pencil test administered by the board at its office in Gardiner. The board may adopt a computer-based format for this examination in the future.]~~

The minimum passing score on the State Law and Rule Examination is 75%. The board shall notify an applicant in writing of the applicant's score within thirty (30) days of an examination. A license may be issued to an approved applicant who passes the examination. A passing score on the State Law and Rule Examination will be recognized by the board for the two-year period following the date of the examination.

STATUTORY AUTHORITY:

EFFECTIVE DATE:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 7 FUNERAL ESTABLISHMENTS

SUMMARY: This ~~Chapter~~chapter describes ~~registration~~the licensure obligations ~~for~~of funeral establishments.

1. Licensure

Every funeral establishment and every branch thereof ~~shall~~must be ~~registered~~licensed with the ~~Board~~board by a licensee in charge. ~~Except as set forth in sections 4 and 5;~~
~~no~~No funeral establishment or branch thereof may operate unless the funeral establishment or branch is ~~registered~~licensed with the ~~Board~~board. The licensee in charge is responsible for the establishment's or branch's compliance with the funeral laws and rules of the board. No funeral establishment or branch thereof may operate without a licensee in charge.

2. Application for Licensure

Application for ~~registration~~licensure of a funeral establishment or branch ~~shall~~must be made by the licensee in charge on a form provided by the ~~Board~~board. The applicant shall submit the ~~required~~fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees," with the application. ~~The funeral inspector will then conduct an inspection of the premises. The Board will act on the application following receipt of the inspection report.~~

3. Issuance of License; Public Display

The ~~Board~~board will issue a ~~registration certificate~~license to each ~~registered~~licensed funeral establishment and branch. The ~~certificate~~license must be publicly displayed on the premises at all times and must be renewed annually.

4. Inspection

An initial inspection of the premises and records may be scheduled after initial issuance of the license. However, a licensee is responsible at all times for complying with the funeral laws and the rules of the board. A funeral inspector or authorized employee of the Office of Licensing and Registration may enter any funeral establishment during reasonable business hours without prior notice for the purpose of inspecting the premises, the records, including mortuary trust records, and the work of licensees and practitioner trainees conducted therein.

~~3. The registration of a funeral establishment or branch automatically terminates forty five (45) days after the death or incapacity of the licensee in charge. Under no circumstances may any funeral services be provided at the establishment or branch within this 45-day period unless and until a licensee in charge has been engaged to operate the facility.~~

~~The establishment or branch may not operate beyond this 45-day period unless a licensee in charge has first submitted an application for registration of the facility. A licensee in charge who submits a timely application may operate the establishment or branch pending disposition of the application by the Board.~~

~~The original registration certificate shall be returned to the board no later than forty five (45) days after the death or incapacity of the licensee.~~

5. Unavailability of Licensee in Charge

A funeral establishment shall immediately notify the board in writing upon the death, incapacity, resignation or unavailability for any reason of a licensee in charge. The establishment or branch may not operate until the establishment has notified the board in writing that a replacement licensee in charge has been engaged. The establishment shall furnish the name and address of the replacement licensee in charge and such additional information as the board may require.

~~4. The registration of a funeral establishment automatically terminates ten (10) days after a change of ownership of the facility. Under no circumstances may any funeral services be provided at the establishment or branch within this 10-day period unless and until a licensee in charge has been engaged to operate the facility. The establishment or branch may not operate beyond this 10-day period unless a licensee in charge has first submitted an application for registration of the facility. A licensee in charge who submits a timely application may operate the establishment or branch pending disposition of the application by the Board.~~

~~The original registration certificate shall be returned to the board no later than ten (10) days after the change of ownership.~~

6. Procedures Upon Change of Ownership

A funeral establishment shall take the following steps within thirty (30) days of a change of ownership as defined in Chapter 1, Section 4-A of the board's rules:

1. Apply for licensure of the establishment and branches by a licensee in charge as described in Section 2 of this chapter; and
2. Send proof to the board that the funeral establishment has given the notices required by Chapter 16, Section 9 of the board's rules.

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Funeral Establishments." Previously the subject matter was Section 8 of Chapter 1.

AMENDED:

December 15, 1993

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 8 SAFETY AND HEALTH STANDARDS

SUMMARY: This ~~Chapter chapter is promulgated to protect the safety and health of the general public by setting sets~~ forth the equipment- and health-related requirements applicable to licensed funeral establishments.

1. Preparation Room

Every funeral establishment maintained or used for the purpose of embalming ~~shall~~must contain at least one room of adequate size to be used exclusively as a preparation or embalming room. No other room ~~shall~~may be used for embalming. A preparation room ~~shall~~may not be accessible to the public when human remains are being prepared. Restrictions on entry into a preparation room ~~shall~~must be posted on all doors to the room. Only the following persons may be admitted to a preparation room:

1. Licensed practitioners of funeral service;
2. ~~Registered~~ Licensed funeral attendants;
3. Practitioner trainees;
4. Unlicensed students who are currently enrolled in a college of mortuary science accredited by the American Board of Funeral Service Education;
5. Medical examiners, consulting physicians or other experts, and their support personnel;
6. Law enforcement officers ~~and authorized personnel~~;
7. Physician(s) of the deceased or the immediate family of the deceased;
8. Licensed cosmetologists; and
9. ~~Members of the immediate family of the deceased~~ Authorized persons as defined in Chapter 1, Section 2 of the board's rules.

2. Biomedical Wastes

Every funeral establishment shall comply with Chapter 900 of the rules of the Department of Environmental Protection, 06-096, entitled "Biomedical Waste Management Rules," dated May 4, 1996, to the extent that chapter is applicable to the funeral establishment.

[NOTE: Chapter 900 is enforced by the Department of Environmental Protection.]

3. Cleanliness and Sanitation

The preparation or embalming room ~~shall~~must be maintained in a clean and sanitary condition at all times.

4. Facilities and Equipment

The facilities and equipment required in preparation or embalming rooms ~~shall~~must include, but not be limited to, the following:

1. Hot and cold running water~~;~~_i
2. Flush or slop sink connected to a public sewerage system or a septic tank~~;~~_i
3. Morgue table which is covered with an impervious material~~;~~_i
4. Covered waste container~~;~~_i
5. First aid emergency kit~~;~~_i
6. Heavy latex (or hypo-allergenic) gloves~~;~~_i
7. Necessary instruments and apparatus for the embalming process~~;~~_i
8. A method of sterilization of instruments~~;~~_i
9. Walls constructed of, or covered with, impervious material which extend from floor to ceiling~~;~~_i
10. Floor of cement, tile, or composition and which extends from wall to wall~~;~~_i
11. Necessary antiseptics and disinfectants~~;~~_i and
12. Clean gowns or aprons~~;~~_i

5. Gown or Smock; Gloves

Each person engaged in the preparation of human remains ~~must~~shall be attired in a clean and sanitary smock or gown. The gown or smock ~~will~~must cover the person from the neck to below the knees. The gown or smock ~~shall~~must be properly laundered or disposed of. Each person shall wear heavy latex (or hypo-allergenic) gloves at all times during the embalming process.

6. Cleaning and Sterilization

Sheets, linens, materials, supplies and all instruments and appliances which have come in contact with human remains ~~shall~~must be thoroughly cleansed and sterilized at the conclusion of each preparation.

7. Ventilation

The preparation room ~~shall~~must be ventilated so that no deleterious odors stay in the room, and no deleterious odors may enter any other part of the premises.

8. Protection of Potable Water

Construction of nonpotable water systems or systems carrying any other nonpotable substance ~~shall~~must be such as to prevent backflow or backsiphonage into a potable water system.

STATUTORY AUTHORITY: 32 MRSA §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Safety and Health Standards." Previously the subject matter was Section 9 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004

02 ————— ~~DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

331 ————— ~~MAINE STATE BOARD OF FUNERAL SERVICE~~

Chapter 9 — ~~COMPLAINTS AND INSPECTIONS~~

~~SUMMARY: This Chapter describes the procedure by which complaints and inspections are handled by the Board.~~

- ~~1. All complaints must be submitted in writing and signed by the complainant before action may be taken. The Board will follow the procedures for investigating and processing complaints contained in the Administrative Complaint Procedure followed by the Department of Professional and Financial Regulation, Office of Licensing and Registration for the professional and occupational licensing boards and registration programs administered by OLR.~~
 - ~~2. The Funeral Inspector may enter any funeral establishment during reasonable business hours without prior notice for the purpose of inspecting the premises, the records, including mortuary trust records, and the work of licensees and practitioner trainees conducted therein. No Board member may inspect a funeral establishment unless accompanied by the Funeral Inspector.~~
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STATUTORY AUTHORITY: 32 MRSA §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Complaints." Previously the subject matter was Section 10 of Chapter 1.

AMENDED:

March 1, 1997 - as "Complaints and Inspections"

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

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Chapter 10 GENERAL RULES / SCOPE OF PRACTICE

SUMMARY: This ~~Chapter~~chapter contains general rules regarding: (1) hairdressing and cosmetology, (2) the scope of practice of funeral directors and funeral attendants, (3) licensure of funeral attendants, (3) the referral of inquiries to a licensed practitioner (4) compliance with the FTC Funeral Rule, and (4)(5) mandatory notices and disclosures, and other topics.

1. Hairdressing and Cosmetology

Hairdressing and cosmetology of the deceased may only be performed by a practitioner of funeral service, ~~by~~ a licensed cosmetologist or ~~by~~ an authorized person.

2. Embalming

Embalming ~~shall may only~~ be performed ~~only~~ by a practitioner of funeral service or a practitioner trainee who is ~~in contact with~~ under the supervision of a practitioner of funeral service.

3. Funeral Directors

A funeral director may engage in all activities of a practitioner of funeral service other than embalming. These may include one or more of the following:

1. Directing or supervising funerals~~;~~
2. Preparing, other than by embalming, or disposing of human remains by any legal means~~;~~ and
3. Operating a funeral establishment which is advertised or used for funeral services.

~~4. Funeral attendants shall not engage in funeral directing or embalming. All funeral attendants shall work under the personal supervision and legal responsibility of a licensed practitioner of funeral service or licensed funeral director who is actively associated with a funeral practitioner. A practitioner of funeral service who employs a funeral attendant shall register the attendant on a form supplied by the Board and shall pay the required fee. Each funeral attendant shall receive annual training in the OSHA rules governing bloodborne pathogens and highly hazardous chemicals found in 29 CFR §§1900.1030 and 1099.119, respectively. When a funeral attendant leaves the employ of a licensee, the practitioner shall promptly notify the Board of the termination of employment. The registration automatically expires upon the termination of employment, and the attendant shall promptly return the registration certificate to the Board.~~

4. Funeral Attendants

1. Funeral attendants may:

- A. Remove human remains from the place of death;
- B. Dress human remains;
- C. Place human remains in a casket;
- D. Assist a practitioner of funeral service at a funeral service, graveside service or memorial service; and
- E. Supervise a visitation.

2. Funeral attendants may not:

- A. Conduct a funeral service, graveside service or memorial service;
- B. Embalm human remains;
- C. Make, negotiate or discuss funeral arrangements with members of the public; or
- D. Make, negotiate or discuss mortuary trust agreements with members of the public.

3. Supervision, Training and Licensure of Funeral Attendants

A funeral attendant may only work under the personal supervision and legal responsibility of a licensed practitioner of funeral service or licensed funeral director who is actively associated with a funeral establishment. "Personal supervision" means that the funeral attendant reports to the funeral practitioner. A practitioner of funeral service who employs a funeral attendant shall apply for licensure of the attendant on a form supplied by the board and shall pay the fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees." Each funeral attendant shall receive annual training of at least one hour in duration in the OSHA rules governing bloodborne pathogens and highly hazardous chemicals found in 29 CFR §§1910.1030 and 1910.119, respectively.

4. Termination of Employment, Change of Supervisor or Change of Employment

- A. A funeral attendant shall notify the board in writing of any termination of employment, change of supervisor or change of employment within ten (10) days of the termination or change. Notice of a change of supervisor or change of employment must include the name of the new supervisor and the name and address of the new funeral home, if applicable.

B. A licensed practitioner of funeral service or funeral director shall notify the board in writing of any termination of employment, change of supervisor or change of employment of a funeral attendant under the supervision of the practitioner or director within ten (10) days of the termination or change. Notice of a change of supervisor must include the name of the new supervisor.

~~5. All inquiries, directions and/or instructions with respect to making or revising funeral arrangements must be referred to a practitioner of funeral service or funeral director.~~

~~6. In the event any holder of a license issued by the Board has a change of address and/or employment, it is the responsibility of that licensee to promptly notify the Board in writing within fifteen (15) business days.~~

5. FTC Funeral Rule

The Board incorporates by reference into this chapter the Funeral Industry Practices Revised Rule issued by the Federal Trade Commission effective July 19, 1994, and codified at 16 CFR Part 453 (~~1/1/99~~1/1/08 ed.). Copies are available at cost from the Board or from the U.S. Government Printing Office, Superintendent of Documents, ~~Mail Stop SSOP, Washington, DC 20402-9328~~P.O. Box 371954, Pittsburgh, PA 15250-7954 or at no charge on the world wide web at ~~http://www.access.gpo.gov/nara/cfr/cfr-table-search.html~~ www.gpoaccess.gov/cfr/index.html.

6. Disclosure of Ownership Interest

A funeral establishment shall disclose the name and address of each person holding an ownership interest in the funeral establishment on each contract or agreement for provision of funeral services or supplies and on the following documents:

- Statement of Funeral Goods and Services Selected
- General Price List (“GPL”)
- Casket Price List (“CPL”)
- Outer Burial Container (“vault”) Price List
- Mortuary Trust Agreement

~~9. Any licenses issued by clerical error shall be void.~~

7. Cost and Availability of Rental Caskets

A funeral establishment shall disclose to customers whether or not rental caskets are offered. The cost and availability of rental caskets ~~shall~~must be disclosed on the General and Casket Price Lists, along with a description of said caskets. If caskets available for rental purposes have been used previously, this also must be disclosed.

STATUTORY AUTHORITY: 32 MRSA §§1451 and 1501

EFFECTIVE DATE:

HISTORY:

Chapter 10, "Fees"	Chapter 11, "General Rules"
<p>EFFECTIVE DATE: April 3, 1990 - as a Chapter entitled "Fees." Previously the subject matter was Section 12 of Chapter 1.</p> <p>AMENDED: November 26, 1991 December 15, 1993 March 1, 1997</p> <p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p> <p>AMENDED: December 21, 1999</p> <p>REPEALED AND REPLACED: October 29, 2001 - as "General Rules / Scope of Practice." Fee provisions for this board and certain others became part of 02-041, Chapter 10.</p>	<p>EFFECTIVE DATE: April 3, 1990 - as a Chapter entitled "General Rules." Previously the subject matter was part of Chapter 1.</p> <p>AMENDED: March 1, 1997</p> <p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p> <p>REPEALED AND REPLACED: October 29, 2001 - as "Continuing Education Requirements" -- see Chapter 11 for any later changes.</p>

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

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Chapter 11 ANNUAL RENEWAL; CONTINUING EDUCATION
REQUIREMENT; INACTIVE STATUS

SUMMARY: This chapter, ~~in conjunction with 32 MRSA §1506, sets forth continuing education requirements for license renewal~~ describes the continuing education requirement and sets forth procedures regarding inactive status licensure.

1. Annual Renewal; Continuing Education

~~Continuing education credits shall be required as a condition of license renewal in order to ensure that practitioners of funeral service maintain the quality of their skills and have contemporary working knowledge to enhance and improve the quality of their service to the public. Licenses issued by the board are renewable annually upon application to the board and payment of the license fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees," plus any applicable late fee. Practitioners of funeral service, funeral directors and funeral attendants shall certify to compliance with the continuing education requirement set forth in this chapter at time of renewal.~~

2. Credit Required Hours

1. Practitioners of Funeral Service and Funeral Directors

Six (6) ~~clock~~ contact hours of approved continuing education during the preceding one-year licensing period are required for renewal of the practitioner and funeral director licenses. Licensees ~~must~~ shall spend these hours in actual attendance at or completion of approved continuing education activities. No more than two (2) of the six (6) hours may be earned through: ~~home study courses, videos, caregiver manuals, and the like~~ (a) on line, internet or distance education activities, or (b) self study activities, whether in written, audio, audiovisual or electronic form. No more than three (3) of the six (6) hours may be earned through ~~funeral home based (i.e., in-house) in-service training offered by a funeral establishment only for practitioners and funeral attendants employed by the establishment. There shall be no~~ No carryover of hours from any one-year licensing period to another is permitted.

2. Funeral Attendants

Licensees renewing on or after March 1, 2011 must meet the following continuing education requirement:

Completion of the annual training in bloodborne pathogens and highly hazardous chemicals required by Chapter 10, Section 4(3) of the board's rules is required for renewal of the funeral attendant license.

3. Hardship Deferment

~~A licensee may request an extension of time for completion of continuing education by submitting to the Board:~~

- ~~1. Proof that a serious disabling illness or physical disability prevented the licensee from meeting the continuing education requirement; or~~
- ~~2. Proof that service in the armed forces prevented the licensee from meeting the continuing education requirement.~~

A licensee may request a deferment of continuing education from the board due to health reasons, military service or other unforeseeable circumstances of genuine hardship. Any licensee who receives a deferment shall make up the deferred continuing education according to a schedule determined by the board in consultation with the licensee.

Deferred continuing education, once completed by a licensee, may not also be used to satisfy the continuing education requirement for a license year other than the year for which the deferment was granted.

Renewal of Lapsed License

~~A licensee applying for renewal of a license that has lapsed for less than two years shall, as a condition of renewal, demonstrate completion of continuing education in a form and amount that the Board, in the exercise of its discretion and upon a consideration of all relevant factors, deems appropriate.~~

~~8. Continuing Education Committee—the Board shall establish a continuing education committee consisting of five licensed practitioners and one member of the Board. The Board member shall be appointed by the Chair to serve as committee chairman for continuing education. The continuing education committee shall, subject to approval by the Board:~~

- ~~A. Review and approve programs for continuing education credit;~~
- ~~B. Assign credit hours to approved programs;~~
- ~~C. Randomly monitor approved educational activities.~~

5.4. Approved Continuing Education Activities

~~The continuing education committee shall recommend that the Board approve for credit continuing education activities that relate to the following subject areas are eligible for approval pursuant to Section 5 of this chapter:~~

[Text applicable to license renewals effective prior to March 1, 2011]

1. Professional competency, professional conduct, business ethics, or legal aspects relating to the practice of the profession-;
2. Programs relating to new techniques, scientific and clinical advances and achievements in research relating to funeral directing and embalming-;
3. Programs relating to business management, personnel management, or programs helping to improve services to the consumer-; and
4. Courses, seminars, lectures, home study courses, videos or other instructional programs which meet the above qualifications and which the ~~committee~~ board determines are of benefit in improving the knowledge or service capability of licensees.

[Text applicable to license renewals effective on or after March 1, 2011]

1. Professional competency, professional conduct, business ethics, or legal aspects relating to the practice of the profession-; and
2. ~~Programs relating to new~~ New techniques; including scientific and clinical advances ~~and achievements in research~~ relating to ~~funeral directing and~~ embalming and funeral arranging.
- ~~5. Programs relating to business management, personnel management, or programs helping to improve services to the consumer.~~
- ~~6. Courses, seminars, lectures, home study courses, videos or other instructional programs which meet the above qualifications and which the committee determines are of benefit in improving the knowledge or service capability of licensees.~~

5. Approval of ~~Programs and~~ Continuing Education Activities

All continuing education activities must be approved as set forth in Section 5(1), (2) or (3) of this chapter:

1. Activities Deemed Approved

The following ~~programs-activities~~ are deemed approved for continuing education credit without further action of the ~~Board~~ board:

- A. ~~Any program~~ Programs approved for continuing education credit by the ~~American~~ Academy of Professional Funeral Service Practice-; and
- B. ~~Any program~~ Programs hosted/sponsored and approved for continuing education credit by any state funeral board or state licensing authority.

The board may monitor activities deemed approved for compliance with the subject matter criteria set forth in Section 4 of this chapter and for accuracy of all representations made.

2. Application for Approval by Sponsor

~~All other persons, corporations or organizations that wish to have a program approved for continuing education credit must apply to the continuing education committee, which shall present its recommendation to the Board.~~ The sponsor of a continuing education activity may apply to the board for approval of the activity. A sponsor may not represent a course as approved for continuing education credit until approval has been conferred by the Board. The application shall contain information pertaining to the nature and history of the ~~organization, person or corporation~~ sponsor, approximate dates of the ~~presentation~~ activity, subject offered, total hours of presentation, plus the name and qualifications of the instructor. The application will be evaluated under the subject matter criteria contained in Section 4 of this chapter and for accuracy of all representations made. Programs are approved for a twelve-month period. A sponsor may not represent an activity as approved for continuing education credit until approval has been conferred by the board.

If the board is unable to timely consider an application for approval, a continuing education activity may be approved by board staff following consultation with the board chair or, if the chair is unavailable, with another member of the board.

3. Post Approval of Activities Application for Approval by Licensee

~~Any licensee seeking credit for attendance at a program that has not been approved as described in paragraph A or B shall submit a syllabus of the program to the continuing education committee, which shall present its recommendation to the Board.~~ A licensee who participated in or plans to participate in a continuing education activity that has not been approved pursuant to Section 5(1) or (2) of this chapter may apply for approval to the board. The licensee shall submit a syllabus of the activity with the application and such other information as the board may require. The application will be evaluated under the subject matter criteria contained in Section 4 of this chapter and for accuracy of all representations made.

~~1. Review of Programs—The continuing education committee may monitor or review any continuing education program already approved by the Board to verify the representations made by the sponsor.~~

6. Credit Reporting Procedure Documentation and Audit

It is the responsibility of each licensee to maintain records, certificates, or other evidence of compliance with the continuing education requirement. ~~Such evidence shall be signed or stamped by the program sponsor and submitted by the licensee at the time of license renewal. The licensee shall also submit at the time of license renewal a continuing education summary sheet, provided in blank by the Board, showing all approved programs attended by the licensee and the number of credit hours earned for each.~~ Reporting, verification and audit of continuing education is governed by Chapter 13 of the rules of the Department of Professional and Financial Regulation, Office of Licensing

and Registration, entitled “Uniform Rule for the Substantiation of Continuing Education Requirements.”

7. Inactive Status Licensure

1. Application and Renewal

A practitioner of funeral service or funeral director may apply for an inactive status license. A licensee who applies for inactive status during the 3 months prior to expiration of the license shall demonstrate compliance with the continuing education requirement license year during which application is made. The board may refuse to issue an inactive status license to a licensee who:

A. Is ineligible for renewal of an active license; or

B. Applies for an inactive status license during the 3 months prior to expiration and fails to demonstrate compliance with the continuing education requirement for the license year during which application is made.

2. Prohibition Against Practice

A licensee may not engage in the practice of funeral service while in inactive status.

3. Continuing Education

A licensee need not comply with the continuing education requirement contained in Chapter 11 of the board’s rules while in inactive status.

4. Renewal of Inactive Status License

A licensee may renew an inactive status license by:

A. Submitting a renewal application;

B. Paying the license fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled “Establishment of License Fees;” and

C. Providing such other information as the board may require.

5. Reinstatement to Active Status

The holder of an inactive status license may return to active status upon application to the board, payment of the required license or reinstatement fee, and certification of completion of eight (8) contact hours of continuing education during the one-year period prior to application.

STATUTORY AUTHORITY: 32 M.R.S.A. §1506

EFFECTIVE DATE:

Chapter 11, "General Rules"	Chapter 12, "Continuing Education Requirements"
<p>Pre-APA</p> <p>EFFECTIVE DATE: May 1, 1970 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"</p> <p>AMENDED: January 26, 1971 June 18, 1974 March 17, 1977 August 18, 1977 December 4, 1979</p> <p>APA</p> <p>READOPTED: December 28, 1979</p> <p>EFFECTIVE DATE: April 3, 1990 - as a Chapter entitled "General Rules."</p> <p>AMENDED: March 1, 1997</p> <p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p> <p>REPEALED AND REPLACED: October 29, 2001 - as "Continuing Education Requirements."</p> <p>NON-SUBSTANTIVE CORRECTIONS: March 29, 2004</p>	<p>EFFECTIVE DATE: December 28, 1979 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"</p> <p>AMENDED: September 7, 1992 - as "Continuing Education Requirement" March 1, 1997</p> <p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p> <p>AMENDED: December 21, 1999</p> <p>REPEALED AND REPLACED: October 29, 2001 - as Transportation of Human Remains." Former subject matter moved to Chapter 11.</p>

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 12 TRANSPORTATION OF HUMAN REMAINS

SUMMARY: This ~~Chapter~~chapter contains rules regarding the transportation of human remains.

1. Generally

Human remains may be transported only in vehicles owned by or leased to the funeral establishment, a practitioner of funeral service, or an authorized person.

2. Vehicles Owned or Leased by Funeral Establishment or Practitioner

Human remains transported in vehicles owned by or leased to the funeral establishment or practitioner must be enclosed and concealed from public view in a mortuary cot, casket or outer burial vault to prevent exposure and to prevent leakage of fluids and/or offensive odors. Such vehicles must:

1. Promote respect for, and preserve the dignity of, the dead human body;
2. Provide ample enclosed area to accommodate an ambulance cot or aircraft ambulance stretcher in a horizontal position;
3. Permit loading and unloading of the body without excessive tilting of the cot or stretcher; and
4. Protect the body or container from excessive movement within the conveyance.

3. Transportation of Embalmed Remains by Common Carrier

Embalmed ~~Human-human~~ remains transported by common carrier must be ~~embalmed and~~ placed in a ~~transfer-combination~~ unit or casket designed to prevent leakage of fluids and ~~/or~~ offensive odors. The ~~container-shall-combination unit or casket must~~ be acceptable to the carrier.

4. Transportation of Unembalmed Remains by Common Carrier

Human remains which ~~cannot be~~are not embalmed or are in a state of decomposition, ~~if~~ when transported by common carrier, ~~shall~~must be enclosed in a sealed Ziegler case or casket designed to prevent leakage of fluids and ~~/or~~ offensive odors.

EFFECTIVE DATE:

Chapter 12, "Continuing Education Requirement"	Chapter 14, "Transportation of Human Remains"
EFFECTIVE DATE: December 28, 1979 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"	EFFECTIVE DATE: March 1, 1997
AMENDED: September 7, 1992 - as "Continuing Education Requirement" March 1, 1997	REPEALED AND REPLACED: October 24, 2001 - as "Temporary Storage." Former subject matter moved to Chapter 12.
EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997	
AMENDED: December 21, 1999	
REPEALED AND REPLACED: October 29, 2001 - as "Transportation of Human Remains." Former subject matter moved to Chapter 11.	

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 13 DISINTERMENT

SUMMARY: This ~~Chapter~~chapter contains rules regarding the disinterment of human remains by ~~licensees~~practitioners of funeral service.

1. Generally

Except as authorized by the Department of Health and Human Services, disinterment ~~shall~~must be made under the direct supervision of a practitioner of funeral service. The licensee ~~shall be~~is responsible for the proper conduct of the disinterment.

2. Transportation of disinterred human remains

Chapter 12 of the ~~Board's~~board's rules ~~shall apply~~applies to disinterments.

STATUTORY AUTHORITY: 32 M.R.S.A. §1451

EFFECTIVE DATE:

Chapter 13, "Inactive Status"	Chapter 15, "Disinterment"
EFFECTIVE DATE: December 15, 1993 - as "Inactive Status"	EFFECTIVE DATE: March 1, 1997
AMENDED: March 1, 1997	REPEALED AND REPLACED: October 29, 2001 - as Code of Ethics." Former subject matter moved to Chapter 13.
EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997	
REPEALED AND REPLACED: October 29, 2001 - as "Disinterment"	

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 14 TEMPORARY STORAGE

SUMMARY: This ~~Chapter~~chapter contains rules regarding the storage of human remains by licensees of funeral service.

1. Less Than Eight Months

Temporary storage of human remains for less than eight months, in tombs or other structures constructed for temporary storage of human remains, is not regarded as final disposition. Removal of the human remains from these structures is not considered disinterment as governed by Chapter 13 of ~~these~~the board's rules.

2. Eight Months or Longer

The storage of human remains for eight months or longer in a tomb or other structure constructed for the purpose of storage is ~~not~~ regarded as final disposition. Removal of the human remains from these structures is considered disinterment as governed by Chapter 13 of ~~these~~the board's rules.

3. Transportation of Human Remains Removed From Temporary Storage

Chapter 12 of the ~~Board's~~board's rules ~~shall apply~~applies to human remains removed from temporary storage.

4. Unembalmed Human Remains

Unembalmed human remains must be placed in a sealed casket or container for temporary storage until final disposition occurs.

[NOTE: Practitioners of funeral service shall be mindful of the permitting requirements in Chapter 146, Section 6 of the rules of the Department of Health and Human Services, Office of Data, Research and Vital Statistics relating to the temporary storage of human bodies. Chapter 146 is enforced by the Department of Health and Human Services.]

STATUTORY AUTHORITY: 32 M.R.S.A. §1451

EFFECTIVE DATE:

March 1, 1997 - as "Transportation of Human Remains"

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Temporary Storage." Former subject matter moved to Chapter 12.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 15 CODE OF ETHICS

SUMMARY: This ~~Chapter~~chapter establishes a code of ethics for licensees of the ~~Board~~board.

1. Accurate and Precise Information

Licensees have a duty to provide the public with accurate and precise information regarding funerals, ~~including embalming,~~ prices, funeral functions and services.

~~10. Licensees shall not make any misrepresentation or fraudulent statement in obtaining licensure.~~

2. Standard of Total Honesty

Licensees shall not make any false or misleading representation, either written or orally. Licensees shall conduct themselves according to a standard of total honesty at all times.

3. Respect All Faiths, Customs and Creeds

Licensees ~~involved in the practice of funeral service~~ shall respect all faiths, customs and creeds of the deceased and conduct themselves appropriately.

4. Handling and Preparation of Human Remains

Licensees shall treat the handling and preparation of human remains with respect, dignity and courtesy.

5. Respect, Dignity and Courtesy

Licensees shall treat all ~~family members, significant others, friends and acquaintances of the deceased~~persons with respect, dignity and courtesy regardless of race, religion, national origin, gender orientation, education, financial status or cause of death.

6. Wishes and Respects of Persons Responsible for the Deceased

Licensees shall respect and carry out the wishes and requests of persons responsible for the deceased, as contracted for.

EFFECTIVE DATE:

Chapter 15, "Disinterment"	Chapter 17, "Code of Ethics"
EFFECTIVE DATE: March 1, 1997 - as "Disinterment"	EFFECTIVE DATE: March 1, 1997 - as "Code of Ethics"
REPEALED AND REPLACED: October 29, 2001 - as "Code of Ethics." Former subject matter moved to Chapter 13.	REPEALED: October 29, 2001. Subject matter moved to Chapter 15.

02	DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
331	MAINE STATE BOARD OF FUNERAL SERVICE
Chapter 16	PREARRANGED FUNERALS AND BURIAL PLANS — MORTUARY TRUST AGREEMENTS

SUMMARY: This chapter adopts forms of mortuary trust agreements for use in Maine.

1. Creation of Mortuary Trust

A mortuary trust subject to 32 MRSA §1401 is created when:

1. ~~funds~~ Funds are entrusted by a payor to ~~any individual, firm, association, partnership or corporation~~ a funeral home as payee under an agreement that the funds will be used for expenses associated with funeral and burial services to be performed in the future upon the death of a designated ~~person~~ beneficiary. ~~The payee shall have the obligations of a trustee with respect to the funds; or~~
2. A life insurance policy has been assigned to the funeral home as beneficiary, or owner and beneficiary, under an agreement that the policy proceeds will be used for expenses associated with funeral and burial services to be performed in the future upon the death of the person insured.

The funeral home has the obligations of a trustee with respect to the funds or the insurance policy and policy proceeds.

2. Exclusive Forms For Maine Mortuary Trust Agreements

No practitioner of funeral service, funeral director or funeral home shall enter into a mortuary trust agreement for performance in this State that does not substantially conform to one of the following forms that is attached to and made a part of this chapter:

1. Maine Mortuary Trust Agreement – Credit For Service

What it is – A credit for service mortuary trust agreement contains no obligation by the funeral home to provide funeral goods and services for a predetermined price. Rather, the amount of money in the trust at time of death will be applied to the goods and services selected. If the amount of money in the trust at time of death is insufficient to pay for the goods and services selected, adjustments must be negotiated between the ~~consumer~~ payor and the funeral home. If the amount of money in the trust at time of death exceeds the cost of the goods and services selected, the ~~consumer~~ payor is entitled to a refund of the difference.

The payor and the funeral home, upon mutual agreement, may replace a credit for service mortuary trust agreement with a guaranteed price mortuary trust agreement at any time prior to the death of the beneficiary.

2. Maine Mortuary Trust Agreement – Guaranteed ~~Price~~Service

What it is – A guaranteed ~~price~~-service mortuary trust agreement obligates a funeral home to provide the funeral goods and services selected upon the death of the beneficiary, whenever that may be, without need of any further payment (with the possible exception of cash advance items). ~~(Treatment of cash advance items may differ.)~~ If the cost of goods and services at time of death exceeds the amount of money in the trust, the funeral home must make up the difference. If the cost of goods and services at time of death is less than the amount of money in the trust, the funeral home may retain the difference in recognition of the risk of ~~underfunding~~inflationary costs.

A guaranteed service mortuary trust agreement must be paid in full by the payor at time of execution, with the possible exception of cash advance items. The funeral home must provide the goods and services selected upon the death of the beneficiary regardless of the value of the trust at time of death.

3. Maine Mortuary Trust Agreement – Life Insurance

What it is – A life insurance mortuary trust agreement funds the provision of funeral goods and services from the proceeds of a life insurance policy payable upon the death of the person insured. Life insurance mortuary trust agreements may only be credit for service. Guaranteed service life insurance mortuary trust agreements are not permitted.

3. Substantial Conformance

A mortuary trust agreement or addendum substantially conforms to one of the forms attached to and made a part of this chapter if:

1. The mortuary trust agreement is identical in all respects to one of the forms attached to and made a part of this chapter; or
2. The mortuary trust agreement or addendum contains all the provisions contained in the applicable form attached to and made a part of this chapter plus additional provisions, provided that:
 - A. None of the additional provisions are inconsistent with any provisions of the form;
 - B. None of the additional provisions dilute any protection afforded to consumers by the form; and
 - C. None of the additional provisions are inconsistent with 32 MRSA §1401.

A mortuary trust agreement that meets the requirements of this Section may be printed on funeral home letterhead.

4. Minimum Type Size

No practitioner of funeral service, funeral director or funeral home shall use any form of mortuary trust agreement, including those printed on funeral home letterhead, in which the body copy is less than 12 points in size.

5. Selection of Goods and Services Mandatory in Guaranteed ~~Price~~ Service Mortuary Trust

No funeral director, practitioner of funeral service or funeral home shall execute a guaranteed service mortuary trust agreement ~~substantially conforming to the Maine Mortuary Trust Agreement—Guaranteed Price~~ unless the payor or settlor has first selected all necessary funeral goods and services ~~and, with the possible exception of~~ cash advance items.

6. Fees

1. Life Insurance Mortuary Trust Agreements

No fee may be charged by a practitioner of funeral service, funeral director or funeral home in connection with a life insurance mortuary trust agreement.

2. Guaranteed Service Mortuary Trust Agreements; Credit for Service Mortuary Trust Agreements Other Than Life Insurance Mortuary Trust Agreements

Fees may be charged in connection with guaranteed service mortuary trust agreements, and credit for service mortuary trust agreements other than life insurance mortuary trust agreements, only to the extent set forth in this subsection. Any fees charged by practitioners of funeral service, funeral directors and funeral homes for the administrative services they render as payees must be specified in the agreement. No initiation fee, however denominated, may be charged in connection with the creation of a mortuary trust. No fees may be charged except for the following services, and may not exceed the amounts shown below:

- | | | |
|-----------|---|---|
| <u>A.</u> | Transfer of account by appointment of successor trustee. | 7% of trust funds,
not to exceed \$200 |
| <u>B.</u> | Revocation of a revocable agreement | 7% of trust funds,
not to exceed \$200 |
| <u>C.</u> | Actual annual financial and tax administration of the account performed
by or on behalf of the funeral home..... | 25% of net interest
earned per annum,
not to exceed \$100 |

No fee for financial or tax administration may be charged for work not actually performed.

“Net interest earned per annum” is the net interest, investment income or appreciation earned by the mortuary trust account after deduction of any fees charged by the financial institution or credit union in which the account is held.

7. Inspection of Records

Mortuary trust agreements and all books, records and accounts related thereto, including the record of deposits, insurance policies and insurance records, and the accountings required by the agreements attached to and made a part of this chapter—

1. ~~Shall~~ Must be made available by the funeral home for inspection by ~~the state funeral inspector or the designee of the Board~~ a funeral inspector or authorized employee of the Office of Licensing and Registration upon request during reasonable business hours without prior notice; and
2. ~~Shall~~ Must be promptly delivered by the funeral home to ~~the state funeral inspector~~ a state funeral inspector, authorized employee of the Office of Licensing and Registration or the ~~Board~~ board upon request.

8. Sale or Transfer of Funeral Home~~Change of Ownership~~

Upon the sale or transfer of a funeral home, whether voluntary or involuntary, and except as otherwise ordered by a court of competent jurisdiction, the new owner—

1. Shall automatically be substituted as ~~payee~~ trustee of all existing mortuary trusts of which the former owner is ~~payee~~ trustee; and
2. Shall assume the former owner’s obligation to perform all existing preneed contracts for funeral goods and services to which the former owner is a party.

D.9. Notice of Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership ~~described as defined in subsection 4~~ Chapter 1, Section 4-A of the board’s rules, the new owner, or the funeral home, shall:

A.1. Notify the payor, settlor or alternate contact person identified in the mortuary trust agreement or preneed contract of the change in ownership and inform ~~the contact~~ such person:

(1)A. In the case of a mortuary trust agreement,

(1) ~~that~~ That the new owner has assumed the role of trustee under the agreement and will provide all funeral goods and services required by the agreement; ~~or~~ and

(2) That the payor, settlor or other contact person is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee; or

~~(7)B.~~ In the case of a preneed contract for funeral goods and services, that the new owner will perform the contract and will provide all funeral goods and services required by the contract-; and

B-2. Notify the financial institution or credit union where the guaranteed service or credit for service mortuary trust is held that the new owner has been automatically substituted as payee pursuant to ~~this section~~ Section 8 of this chapter and has assumed the role of trustee under the agreement.

9.10. Effective Date

Section 7 of this chapter applies to all mortuary trust agreements, whenever executed, upon the effective date of this chapter. Sections 8 and 9 of this chapter and any amendments thereto shall apply to all sales ~~or~~, transfers and changes of ownership of funeral homes occurring on or after the effective date of this chapter or amendment, as the case may be. The remaining provisions of this chapter and any amendments thereto shall apply to all mortuary trust agreements executed on or after the effective date of this chapter or amendment, as the case may be.

STATUTORY AUTHORITY: 32 MRSA §§1401(2) and 1451

EFFECTIVE DATE: 120th day after the date on which this chapter is filed with the Secretary of State

February 21, 2002 (120th day after the date on which this chapter is filed with the Secretary of State)

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004- Appendices, spelling and punctuation only

MAINE MORTUARY TRUST AGREEMENT

for the benefit of

1. Creation

Mortuary trust. The mortuary trust is the fund created by this agreement to assure the provision of funeral and burial services to the beneficiary. The mortuary trust consists of the ~~initial~~ payment made for that purpose upon the signing of this agreement, any money added to the fund at a later date, and all interest and investment income earned by the fund, less fees and taxes paid pursuant to the terms of this agreement.

2. Parties

Beneficiary. The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:

(name)

Payor. The payor is the person who is funding this mortuary trust, ~~or the duly appointed legal representative of such person~~. The payor is:

(name)

(relationship to beneficiary)

(address)

(city, state zip)

(telephone)

Funeral home. The funeral home is the trustee for all money paid into the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The payor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

(name)

(address)

(city, state, zip)

(telephone)

☐ *Representative of payor (check if applicable).* This is the person for the funeral home to contact and report to in lieu of the payor for all purposes under this agreement. The representative of the payor may exercise all powers and authority conferred upon the payor by this agreement:

(name)

(relationship to beneficiary)

(address)

(city, state, zip)

(telephone)

☐ *Alternate contact ~~Contact~~ person (check if applicable).* ~~The~~ This is the person for the funeral home to contact on behalf of the payor with any questions concerning the mortuary trust is identified below. This may be the payor or another person chosen by the payor and report to for all purposes under this agreement in the event that the payor or representative of the payor is deceased, incapacitated or otherwise unavailable:

(name)

(relationship to beneficiary)

(address)

(city, state, zip)

(telephone)

~~Beneficiary. The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:~~

~~(name)~~

3. ~~Initial~~ Payment

\$ _____

The funeral home hereby acknowledges receipt in trust of ~~an initial~~ payment in the amount shown. Payment was made in the form of ☐ cash ☐ check ☐ share draft ☐ money order.

(check one) If payment was made by check, share draft or money order, a photocopy must be attached to each copy of this agreement.

4. Deposit of ~~Initial~~ Payment

The funeral home shall deposit the ~~initial~~ payment in a separate account in the financial institution or credit union identified below within ten (10) days after receipt of the ~~initial~~ payment from the payor:

(name of financial institution or credit union)

(address)

(city, state, zip)

~~(telephone)~~

Important Instructions to Payor

1. Make your check, share draft or money order payable solely to the financial institution or credit union identified above—*not* to the funeral home.
2. Write the names of the funeral home and beneficiary on the check, share draft or money order for identification purposes.
3. For your protection, mail a copy of this agreement to the financial institution or credit union with instructions to contact you if the ~~initial~~ payment is not received from the funeral home.

5. ~~Deposit of Additional Payments~~ Payment in Full

~~The funeral home shall deposit any money added to the mortuary trust at a later date within ten (10) days after receipt of the additional money from the payor. The payor and funeral home agree that the amount identified in paragraph 3 represents payment in full for the funeral goods and services selected pursuant to paragraph 10.~~

6. Record of Account; Inspection of Record

The funeral home shall maintain a complete record of the ~~initial payment and any additional payments~~ funds paid into the trust, including principal and interest, and of all fees and taxes paid from the trust. The record must contain the name and address of the financial institution or credit union and the dates and amounts of all deposits and withdrawals. ~~The trustee must make the record available for inspection by the payor.~~

The funeral home shall make the amount of the deposit, cumulative interest, cumulative expenses and current balance available for inspection by the payor without prior notice during regular office hours. The funeral home shall make the complete record available for inspection within three (3) business days following receipt of a request for complete inspection from the payor.

7. Permissible Investments

The ~~initial~~ deposit into the mortuary trust ~~shall~~ must be deposited in:

- ☐ a federally insured deposit or share account ☐ a trust account. (*check one*)

A deposit in a trust account may be invested in or used to purchase only the following:

- Federally insured deposit or share accounts;

- Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- Municipal securities that are exempt from registration under 32 MRSA §10502(1)(A); and
- Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of 24-A MRSA, chapter 27. A funeral home, its employees and agents may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

If the funeral home subsequently transfers or deposits all or any part of the mortuary trust into the investment category not initially selected by the payor (i.e., federally insured account or trust account), the funeral home shall notify the payor within ten (10) days after making the deposit or transfer. No additional consent of the payor is necessary to authorize the change.

8. Revocability

This mortuary trust agreement is ☐ revocable ☐ irrevocable. (*check one*)

A *revocable* agreement may be terminated by the payor at any time, in which case the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph ~~20-22~~ and any taxes paid pursuant to paragraph ~~24~~23. The refund ~~shall~~must be made within thirty (30) days after receipt of written notice of revocation from the payor.

An *irrevocable* agreement may not be terminated by the payor. However, the payor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee pursuant to paragraph 17 and appointing a successor trustee pursuant to paragraph 18. ~~See paragraphs 17 and 18.~~

9. Guaranteed ~~Price-Service~~ Mortuary Trust

The mortuary trust created by this agreement is a *guaranteed ~~price-service~~* mortuary trust. The funeral home may also offer a *credit for service* mortuary trust, but is not required to do so.

I have explained to the payor the difference between the guaranteed ~~price-service~~ mortuary trust created by this agreement and a credit for service mortuary trust.

(funeral home)

I understand the difference between the guaranteed ~~price-service~~ mortuary trust created by this agreement and a credit for service mortuary trust.

(payor)

10. Funeral Goods and Services Selected

Upon the death of the beneficiary, the funeral home shall provide the funeral goods and services selected by the payor on ~~the a~~ Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor. *Funeral goods and services must be selected at this time.*

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

11. Guaranteed Service; Substitute Goods

The funeral goods and services described on the Statement of Funeral Goods and Services ~~shall~~must be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary's death. If any of the funeral goods specified in the Statement of Funeral Goods and Services Selected are no longer available at

the time of the beneficiary's death, the trustee shall substitute goods of equal or better quality.

12. Treatment of Cash Advance Items *(check one)*

(Cash advances are out-of-pocket payments made by the funeral home to third parties for newspaper notices, cemetery or crematory charges, clergy honoraria, pallbearers, flowers, death certificates, and the like. The specific cash advance items that the funeral home has agreed to provide are listed on the copy of the Statement of Funeral Goods and Services Selected that is attached to this agreement.)

☐ The cash advance items described on the Statement of Funeral Goods and Services ~~Selected shall must~~ be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary's death. Cash advance items must be selected at this time.

☐ The payor agrees to reimburse the funeral home for cash advance items paid for by the funeral home in excess of the amounts shown for those items on the Statement of Funeral Goods and Services Selected. The payor understands that he or she will be separately billed for these excess amounts upon the conclusion of the funeral.

~~Cash advance items must be selected at this time.~~

13. Permissible Uses of Trust Funds

The funeral home shall apply the mortuary trust funds solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to ~~paragraph 10~~ paragraphs 10-12;
- Any amounts retained by the funeral home for the funeral home's own use pursuant to paragraph 14;
- Any complete refund to the payor required by paragraph 14 due to the funeral home's inability to perform its obligations under this agreement;
- Any complete refund to the payor required by paragraph 8 if this mortuary trust agreement is revocable and the payor has revoked the trust.
- Payment of any fees permitted by paragraph ~~20~~ 22;
- Payment of taxes pursuant to paragraph ~~21-23~~ or otherwise.

14. Amounts Retained by Funeral Home For Its Own Use:

Inability of Funeral Home to Perform

The funeral home may withdraw and retain for its own use any funds remaining in the trust following payment for the funeral goods and services and cash advance items selected (or their substitutes).

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all trust funds to the payor.

15. Transfer of Mortuary Trust

This agreement constitutes the payor's written consent to the direct transfer of the mortuary trust funds by the funeral home from one financial institution or credit union to another financial institution or credit union, or, if the trust is revocable, to the payor. The funeral home may direct the transfer of the mortuary trust funds to another financial institution or credit union for any reason consistent with the purpose of this agreement and the governing law and rules. No additional written consent of the payor is necessary to authorize the transfer.

16. Withdrawals of Mortuary Trust Funds

The funeral home may withdraw money from the mortuary trust only upon presentation of a certified copy of the death certificate of the beneficiary and only for the purposes listed in paragraph 13, provided that presentation of the death certificate need not be made for withdrawals to pay fees as permitted by paragraph ~~2022~~, to pay taxes as permitted by paragraph ~~21-23~~ or otherwise, or to pay the complete refund to the payor permitted by paragraph 8 (if this mortuary trust is revocable and the payor has revoked the trust).

17. Resignation of Funeral Home as Trustee

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- ~~The funeral home for any reason no longer desires to continue as trustee; or~~
- The payor for any reason requests the funeral home to resign as trustee; or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

~~A voluntary resignation of the funeral home as trustee shall be ineffective unless the trustee has delivered written notice of the resignation to the payor, accompanied by an accounting of trust funds, at least fifteen (15) days before the~~

~~effective date of the resignation. When the payor has requested the resignation, the trustee shall deliver a written resignation and an accounting of trust funds to the payor within fifteen (15) days after delivery of the written request.~~

A funeral home resigns as trustee by delivering to the payor, and to any successor trustee identified by the payor pursuant to paragraph 18:

- Written notice of resignation;
- This mortuary trust agreement, including the Statement of Funeral Goods and Services Selected that is attached to this agreement.
- Control of the trust funds to the payor or successor trustee, as the case may be; and
- A report of trust funds as of the date of resignation that contains the information described in paragraph 20.

If the payor has requested the resignation, the funeral home shall complete the resignation as described above within thirty (30) days after receiving a written request to resign from the payor.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the payor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The payor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in this paragraph. If the payor chooses resignation, the payor may either name a successor trustee or request a refund of the trust, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

18. Appointment of Successor Trustee

~~In the event of the resignation or incapacity of the funeral home as trustee~~If the funeral home resigns as trustee pursuant to paragraph 17, the payor may appoint a different funeral home as successor trustee.

19. Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership of the funeral home, the new owner, or the funeral home, shall notify the ~~contact person identified in paragraph 2~~payor of the change and shall inform the ~~contact person~~payor that the new owner

has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the payor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 17 and 18 of this agreement. For purposes of this paragraph, “change of ownership” means the sale or transfer of the entire ownership of a funeral home.

20. Annual Report

The funeral home shall annually report to the payor and beneficiary the current value of the mortuary trust, fees paid to the trustee, and the nature and amount of all trust income and expenses recorded since the closing date of the prior report. Fees, income and expenses may be reported via IRS Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts or IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, including Schedule K-1 to Form 1041.

21. Final Report; Termination of Trust

The funeral home shall furnish the payor (or the estate of the payor, as the case may be) with a final report within thirty (30) days after rendition of services. The final report must contain the information described in paragraph 20, and must in addition report the final disposition of all trust funds. The mortuary trust terminates upon delivery of the final report and payment of any refund required by paragraphs 8 or 13.

20.22. Fees

No fees may be charged against or deducted from the mortuary trust by the funeral home except for the following:

Description	Amount
Transfer of account by appointment of successor trustee	
Revocation of revocable agreement.....	
Actual financial and tax administration of the account performed by or on behalf of the funeral home	

Notice to Payor

The *maximum* fees the funeral home can charge for the three services listed above are contained in Chapter 16 of the rules of the State Board of Funeral Service. As ~~initially~~ established by the Board, those maximum amounts are: 7% of trust funds, not to exceed \$200, for a transfer; 7% of trust funds, not to exceed \$200, for a revocation; and 25% of net interest earned per annum, not to exceed \$100, for annual tax and financial administration. This agreement may not contain any other fees.

21.23. Taxes (check one)

☐ Trust earnings shall be treated as personal income of the payor. The payor will be responsible for payment of any tax due on trust earnings.

The funeral home does not provide tax advice to the payor other than as required by the instructions to IRS Form 1041. The payor is encouraged to consult an independent tax advisor to determine which of these two options is more advantageous to the payor. The payor acknowledges that s/he is not relying upon the tax advice of the funeral home.

☐ If the trust is within the applicable contribution limit for treatment as a “qualified funeral trust” under federal tax law, the funeral home shall elect such treatment on behalf of the trust and shall pay any federal income tax due directly from trust funds. ~~[Note: For trusts created in 2001, the contribution limit for treatment as a qualified funeral trust is \$7500 per year.]~~

22.24. Maine Law Controlling

The situs of this mortuary trust ~~shall be~~ is Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to The Maine Uniform Trust Code, 18-B MRSA §101 et seq., 32 MRSA §1401 and Chapter 18-16 of the rules of the ~~Maine State~~ Board of Funeral Service.

23.25. Binding on Legal Representatives

This agreement is binding upon and ~~inures runs~~ to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

(signature page follows)

Dated at _____, Maine this _____ day of _____, 2____.

Payor: _____

Funeral Home: _____

(~~person signing on behalf of funeral home~~ funeral practitioner)

(license number)

(position)

(owners of funeral home)

(addresses of owners)

MAINE MORTUARY TRUST AGREEMENT

for the benefit of

1. Creation

Mortuary trust. The mortuary trust is the fund created by this agreement to be applied to the provision of funeral and burial services to the beneficiary. The mortuary trust consists of the initial payment made for that purpose upon the signing of this agreement, any money added to the fund at a later date, and all interest and investment income earned by the fund, less fees and taxes paid pursuant to the terms of this agreement.

2. Parties

Beneficiary. The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:

(name)

Payor. The payor is the person who is funding this mortuary trust, ~~or the duly appointed legal representative of such person.~~ The payor is:

(name)

(relationship to beneficiary)

(address)

(city, state, zip)

(telephone)

Funeral home. The funeral home is the trustee for all money paid into the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The payor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

(name)

(address)

(city, state, zip)

(telephone)

☐ Representative of payor (check if applicable). This is the person for the funeral home to contact and report to in lieu of the payor for all purposes under this agreement. The representative of the payor may exercise all powers and authority conferred upon the payor by this agreement:

(name)

(relationship to beneficiary)

(address)

(city, state, zip)

(telephone)

~~Contact~~ ☐ Alternate contact person (check if applicable). This is the person for the funeral home to contact on behalf of the payor with any questions concerning the mortuary trust is identified below. This may be the payor or another person chosen by the payor and report to in lieu of the payor for all purposes under this agreement in the event that the payor or representative of the payor is deceased, incapacitated or otherwise unavailable:

(name)

(relationship to beneficiary)

(address)

(city, state, zip)

(telephone)

~~Beneficiary. The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:~~

~~(name)~~

3. Initial Payment

\$

The funeral home hereby acknowledges receipt in trust of an initial payment in the amount shown. Payment was made in the form of ☐ cash ☐ check ☐ share draft ☐ money order.

(check one) If payment was made by check, share draft or money order, a photocopy must be attached to each copy of this agreement.

4. Deposit of Initial Payment

The funeral home shall deposit the initial payment in a separate account in the financial institution or credit union identified below within ten (10) days after receipt of the initial payment from the payor:

(name of financial institution or credit union)

(address)

(city, state, zip)

(telephone)

Important Instructions to Payor

1. Make your check, share draft or money order payable solely to the financial institution or credit union identified above—*not* to the funeral home.
2. Write the names of the funeral home and beneficiary on the check, share draft or money order for identification purposes.
3. For your protection, mail a copy of this agreement to the financial institution or credit union with instructions to contact you if the initial payment is not received from the funeral home.

5. Deposit of Additional Payments

The funeral home shall deposit any money added to the mortuary trust at a later date within ten (10) days after receipt of the additional money from the payor.

6. Record of Account; Inspection of Record

The funeral home shall maintain a complete record of the initial payment and any additional payments into the trust, including principal and interest, and of all fees and taxes paid from the trust. The record must contain the name and address of the financial institution or credit union and the dates and amounts of all deposits and withdrawals. ~~The funeral home must make the record available for inspection by the payor.~~

The funeral home shall make the amount of initial deposit, cumulative interest/additional deposits, cumulative expenses and current balance available for inspection by the payor without prior notice during regular office hours. The funeral home shall make the complete record available for inspection within three (3) business days following receipt of a request for complete inspection from the payor.

7. Permissible Investments

The initial deposit into the mortuary trust ~~shall~~must be deposited in:

- ☐ a federally insured deposit or share account ☐ a trust account. *(check one)*

A deposit in a trust account may be invested in or used to purchase only the following:

- Federally insured deposit or share accounts;
- Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- Municipal securities that are exempt from registration under 32 MRSA §10502(1)(A); and
- Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of 24-A MRSA, chapter 27. A funeral home, its employees and agents may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

If the funeral home subsequently transfers or deposits all or any part of the mortuary trust into the investment category not initially selected by the payor (i.e., federally insured account or trust account), the funeral home shall notify the payor

within ten (10) days after making the deposit or transfer. No additional consent of the payor is necessary to authorize the change.

8. Revocability

This mortuary trust agreement is ☐ revocable ☐ irrevocable. (*check one*)

A *revocable* agreement may be terminated by the payor at any time, in which case the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph ~~21~~22 and any taxes paid pursuant to paragraph ~~22~~23. The refund ~~shall~~must be made within thirty (30) days after receipt of written notice of revocation from the payor.

An *irrevocable* agreement may not be terminated by the payor. However, the payor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee ~~and appointing a successor trustee. See paragraphs 17 and 18~~pursuant to paragraph 17 and appointing a successor trustee pursuant to paragraph 18.

9. Credit for Service Mortuary Trust

The mortuary trust created by this agreement is a *credit for service* mortuary trust. The funeral home may also offer a *guaranteed* ~~price~~service mortuary trust, but is not required to do so.

I have explained to the payor the difference between the credit for service mortuary trust created by this agreement and a guaranteed ~~price~~service mortuary trust.

(funeral home)

I understand the difference between the credit for service mortuary trust created by this agreement and a guaranteed ~~price~~service mortuary trust.

(payor)

10. Funeral Goods and Services Selected (*check one*)

Funeral Goods and services may be selected at the present time or at any later time. Check one of the two options below.

- ☐ Upon the death of the beneficiary, the funeral home shall, to the extent that trust funds are available—
 - Provide the funeral goods and services selected by the payor on ~~the~~a Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor; and

- Pay the cash advance items identified on the Statement of Funeral Goods and Services Selected.

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

- The payor has decided not to select any funeral goods and services at this time. The payor may make this selection at any time up to the death of the beneficiary. After the death of the beneficiary, selection of funeral goods and services may be made by the authorized person as determined pursuant to 22 MRSA §2843-A.

11. Price of Funeral Goods and Services Selected

The price of the funeral goods and services selected and the designated cash advance items will be the prices in effect at the time of the beneficiary's death, which may be higher or lower than the prices presently in effect.

12. Permissible Uses of Trust Funds

The funeral home shall apply the mortuary trust funds solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to paragraph 10;
- Any partial refund to the payor required by paragraph 13;
- Any complete refund to the payor required by paragraph 13 due to the funeral home's inability to perform its obligations under this agreement;
- Any complete refund to the payor required by paragraph 8 if this mortuary trust agreement is revocable and the payor has revoked the trust.
- Payment of any fees permitted by paragraph ~~24~~22;
- Payment of taxes pursuant to paragraph ~~22-23~~ or otherwise.

13. Partial Refund of Trust Funds to Payor; Inability of Funeral Home to Perform

~~If the price of the funeral goods and services and cash advance items selected is less than the amount of money in the trust at the time of the beneficiary's death, the funeral home shall either:~~

- ~~• Pay the difference to the payor; or~~

- ~~Make a separate agreement with the payor for the purchase of additional or upgraded funeral goods or services or cash advance items with trust funds.~~

If the price of the funeral goods and services and cash advance items selected is less than the amount of money in the trust at the time of the beneficiary's death, the funeral home shall promptly remit the difference to (check one):

- ☐ the estate of the beneficiary, if other than the payor
- ☐ the payor
- ☐ the following person or persons (insert details below)

If the payor has been designated above to receive any excess trust funds, the funeral home, as an alternative to remittance of excess trust funds to the payor, may make a separate agreement with the payor for the purchase of additional or upgraded funeral goods or services or cash advance items from the excess trust funds. This agreement must be documented on a Statement of Funeral Goods and Services Selected.

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all trust funds in accordance with the designation made in this paragraph.

14. Additional Payment by Payor

If the price of the funeral goods and services and cash advance items selected is greater than the amount of money in the trust at the time of the beneficiary's death, the payor and the funeral home shall do either or both of the following:

- Make an agreement for additional payment;
- Modify the goods or services or cash advance items selected.

However, in no event ~~shall is~~ the funeral home ~~be~~ obligated to provide funeral goods or services or make cash advances for which the funeral home will not be compensated.

15. Transfer of Mortuary Trust

This agreement constitutes the payor's written consent to the direct transfer of the mortuary trust funds by the funeral home from one financial institution or credit

union to another financial institution or credit union, or, if the trust is revocable, to the payor. The funeral home may direct the transfer of the mortuary trust funds to another financial institution or credit union for any reason consistent with the purpose of this agreement and the governing law and rules. No additional written consent of the payor is necessary to authorize the transfer.

16. Withdrawal of Mortuary Trust Funds

The funeral home may withdraw money from the mortuary trust only upon presentation of a certified copy of the death certificate of the beneficiary and only for the purposes listed in paragraph 12, provided that presentation of the death certificate need not be made for withdrawals to pay fees as permitted by paragraph ~~21~~22, to pay taxes as permitted by paragraph ~~22~~23 or otherwise, or to pay the complete refund to the payor permitted by paragraph 8 (if this mortuary trust agreement is revocable and the payor has revoked the trust).

17. Resignation of Funeral Home as Trustee

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- ~~The funeral home for any reason no longer desires to continue as trustee; or~~
- The payor for any reason requests the funeral home to resign as trustee; ~~;~~ or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

~~A voluntary resignation of the funeral home as trustee shall be ineffective unless the funeral home has delivered written notice of the resignation to the payor, accompanied by an accounting of trust funds, at least fifteen (15) days before the effective date of the resignation. When the payor has requested the resignation, the funeral home shall deliver a written resignation and an accounting of trust funds to the payor within fifteen (15) days after delivery of the written request.~~

A funeral home resigns as trustee by delivering to the payor, and to any successor trustee identified by the payor pursuant to paragraph 18:

- Written notice of resignation;
- This mortuary trust agreement, including any Statement of Funeral Goods and Services Selected that is attached to this agreement;
- Control of the trust funds to the payor or successor trustee, as the case may be; and

- A report of trust funds as of the date of resignation that contains the information described in paragraph 20;

If the payor has requested the resignation, the funeral home shall complete the resignation as described above within thirty (30) days after receiving a written request to resign from the payor.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the payor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The payor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in this paragraph. If the payor chooses resignation, the payor may either name a successor trustee or request a refund of the trust, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

18. Appointment of Successor Trustee

~~In the event of the resignation or incapacity of the funeral home as trustee~~ If the funeral home resigns as trustee pursuant to paragraph 17, the payor may appoint a different funeral home as successor trustee.

19. Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership of the funeral home, the new owner, or the funeral home, shall notify the ~~contact person identified in paragraph 2~~ payor of the change and shall inform the ~~contact person~~ payor that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the payor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 17 and 18 of this agreement. For purposes of this paragraph, “change of ownership” means the sale or transfer of the entire ownership of a funeral home.

20. Final Accounting by Funeral Home; Termination of Trust **Annual Report**

~~The funeral home shall furnish the payor with a final accounting of trust funds within thirty (30) days after rendition of final services. The mortuary trust shall terminate upon delivery of the accounting and payment of any partial refund required by paragraph 13. The funeral home shall annually report to the payor and~~

beneficiary the current value of the mortuary trust, fees paid to the trustee, and the nature and amount of all trust income and expenses recorded since the closing date of the prior report. Fees, income and expenses may be reported via IRS Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts, or IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, including Schedule K-1 to Form 1041.

21. Final Report; Termination of Trust

The funeral home shall furnish the payor (or the estate of the payor, as the case may be) with a final report within thirty (30) days after rendition of services. The final report must contain the information described in paragraph 20, and must in addition report the final disposition of all trust funds. The mortuary trust terminates upon delivery of the report and payment of any refund required by paragraphs 8 or 13.

22. Fees

No fees may be charged against or deducted from the mortuary trust by the funeral home except for the following:

Description	Amount
Transfer of account by appointment of successor trustee.....	
Revocation of revocable agreement.....	
Actual financial and tax administration of the account performed by or on behalf of the funeral home	

Notice to Payor

The *maximum* fees the funeral home can charge for the three services listed above are contained in Chapter 16 of the rules of the State Board of Funeral Service. As ~~initially~~ established by the Board, those maximum amounts are: 7% of trust funds, not to exceed \$200, for a transfer; 7% of trust funds, not to exceed \$200, for a revocation; and 25% of net interest earned per annum, not to exceed \$100, for annual tax and financial administration. This agreement may not contain any other fees.

23. Taxes (check one)

☐ Trust earnings shall be treated as personal income of the payor. The payor will be responsible for payment of any federal income tax due on trust earnings.

The funeral home does not provide tax advice to the payor other than as required by the instructions to IRS Form 1041. The payor is encouraged to consult an independent tax advisor to determine which of these two options is more advantageous to the payor. The payor acknowledges that s/he is not relying upon the tax advice of the funeral home.

☐ If the trust is within the applicable contribution limit for treatment as a “qualified funeral trust” under federal tax law, the funeral home shall elect such treatment on behalf of the trust and shall pay any federal income tax due directly from trust funds. ~~[Note: For trusts created in 2001, the contribution limit for treatment as a qualified funeral trust is \$7500 per~~

24. Maine Law Controlling

The situs of this mortuary trust ~~shall be~~ Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to The Maine Uniform Trust Code, 18-B MRSA §101 et seq., 32 MRSA §1401 and Chapter ~~18-16~~ of the rules of the ~~Maine State~~ Board of Funeral Service.

25. Binding on Legal Representatives

This agreement is binding upon and ~~inures runs~~ to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

(signature page follows)

Dated at _____, Maine this _____ day of _____, 2____.

Payor: _____

Funeral Home: _____

(~~person signing on behalf of funeral home~~ funeral practitioner)

(license number)

(position)

(owners of funeral home)

(addresses of owners)

MAINE MORTUARY TRUST AGREEMENT

for the benefit of

1. Creation

Mortuary trust. The mortuary trust is the fund created by this agreement to assure the provision of funeral and burial services to the person insured. The mortuary trust consists of one or more insurance policies on the life of the person insured, and all proceeds, dividends, premium rebates, disbursements and payments of every kind made from such policy, including all interest and investment income earned.

(name of issuer and policy number)

(name of issuer and policy number)

(date of issuance)

(date of issuance)

(policy amount)

(policy amount)

(attach any additional policy information as a separate sheet)

This policy (or policies) (*check one*):

- ☐ has been assigned to the funeral home as owner and beneficiary and is payable to the funeral home upon the death of the person insured.
- ☐ designates the funeral home as a beneficiary and is payable to the funeral home upon the death of the person insured.

If the funeral home is owner and beneficiary, the policy is attached to this mortuary trust agreement. If the funeral home is beneficiary only, a copy of the policy is attached to this mortuary trust agreement.

2. Parties

Person Insured. The person insured is the person who will receive the funeral and burial services described in this agreement. The person insured is the sole beneficiary of this trust. The person insured is:

(name)

Settlor. The settlor is the person who assigned the insurance policy to the funeral home as owner and beneficiary, or designated the funeral home as a beneficiary of the policy. (The settlor may be the person insured, or a different person.) The settlor is:

(name)

(relationship to insured)

(address)

(city, state, zip)

(telephone)

Funeral home. The funeral home is the trustee for the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The settlor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

(name)

(address)

(city, state, zip)

(telephone)

☐ *Representative of settlor (check if applicable).* This is the person for the funeral home to contact and report to in lieu of the settlor for all purposes under this agreement. The representative of the settlor may exercise all powers and authority conferred upon the settlor by this agreement.

(name)

(relationship to person insured)

(address)

(city, state, zip)

(telephone)

☐ *Alternate contact person (check if applicable).* This is the person for the funeral home to contact and report to for all purposes under this agreement in the event that the settlor or representative of the settlor is deceased, incapacitated or otherwise unavailable:

(name)

(relationship to person insured)

(address)

(city, state, zip)

(telephone)

3. Receipt of Policy

The funeral home hereby acknowledges receipt in trust of the insurance policy or copy of the policy identified in paragraph 1.

4. Record of Account; Inspection of Record

The funeral home shall maintain a complete record of all: (a) policy statements, bills, notices, payments and correspondence received from the insurer, (b) correspondence and notices sent by the funeral home, and (c) premium payments charged against the mortuary trust. The funeral home shall make the complete record available for inspection by the settlor without prior notice during business hours.

5. Revocability

This mortuary trust agreement is ☐ revocable ☐ irrevocable. *(check one)*

A *revocable* agreement may be terminated by the settlor at any time. Upon receipt of written notice of revocation from the settlor, the funeral home shall promptly execute all documents necessary to assign the insurance policy to the settlor or to effectuate the change of beneficiary, as the case may be.

An *irrevocable* agreement may not be terminated by the settlor. However, the settlor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee and appointing a successor trustee in accordance with paragraphs 13 and 14.

6. Credit for Service Mortuary Trust

The mortuary trust created by this agreement is a credit for service mortuary trust. This means that the insurance policy proceeds will be applied to the cost of the funeral goods and services selected. If the policy proceeds exceed the cost of the funeral goods and services selected, the funeral home has the fiduciary duty to promptly remit the difference to the settlor in accordance with paragraph 10. If the policy proceeds are insufficient to pay for the funeral goods and services selected, adjustments must be negotiated between the settlor and the funeral home in accordance with paragraph 11. The funeral home is not guaranteeing to provide the funeral goods and services selected from the policy proceeds.

7. Funeral Goods and Services Selected *(check one)*

Funeral Goods and services may be selected at the present time or at any later time. Check one of the two options below.

- ☐ Upon the death of the beneficiary, the funeral home shall, to the extent that trust funds are available—
 - Provide the funeral goods and services selected by the payor on a Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor; and
 - Pay the cash advance items identified on the Statement of Funeral Goods and Services Selected.

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

- ☐ The payor has decided not to select any funeral goods and services at this time. The payor may make this selection at any time up to the death of the beneficiary. After the death of the beneficiary, selection of funeral goods and

services may be made by the authorized person as determined pursuant to 22 MRSA §2843-A.

8. Price of Funeral Goods and Services Selected

The price of the funeral goods and services selected and the designated cash advance items will be the prices in effect at the time of the death of the person insured, which may be higher or lower than the prices presently in effect.

9. Permissible Uses of Trust Funds

The funeral home shall apply the proceeds, dividends, payments and disbursements from the insurance policy solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to paragraph 7; and
- Any remittance of policy proceeds required by paragraph 10.

10. Partial Remittance of Policy Proceeds to Settlor; Inability of Funeral Home to Perform

If the price of the funeral goods and services and cash advance items selected is less than the amount of the policy proceeds, the funeral home shall promptly remit the difference to *(check one)*:

- ☐ other beneficiary(ies) named in the insurance policy(ies)
- ☐ the estate of the person insured, if other than the settlor
- ☐ the settlor
- ☐ the following person or persons *(insert details below)*

If the settlor has been designated above to receive any excess policy proceeds, the funeral home, as an alternative to remittance of excess policy proceeds to the settlor, may make a separate agreement with the settlor for the purchase of additional or upgraded funeral goods or services or cash advance items from the policy proceeds. This agreement must be documented on a Statement of Funeral Goods and Services Selected.

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all policy proceeds received in accordance with the designation made in this paragraph.

11. Additional Payment by Settlor

If the price of the funeral goods and services and cash advance items selected is greater than the policy proceeds, the settlor and the funeral home shall do either or both of the following:

- Make an agreement for additional payment;
- Modify the goods or services or cash advance items selected.

However, in no event is the funeral home obligated to provide funeral goods or services or make cash advances for which the funeral home will not be compensated.

12. Obligations With Respect to Insurance Policy

Settlor—If the settlor has retained ownership of the life insurance policy identified in paragraph 1 as of the date of this agreement, the settlor agrees that s/he will not assign the policy, surrender the policy for cash value, borrow from the policy, change the beneficiary status of the trustee, or take any other action with respect to the policy to the extent that such action may: (a) jeopardize, impede or prevent the accomplishment of the purpose for which this agreement was created in the event that the person insured were to die immediately after such action was taken, or (b) impair the value of the policy with respect to any funeral goods and services selected. If the policy proceeds are insufficient to pay the funeral home for the funeral goods and services and cash advance items provided pursuant to this agreement, and the insufficiency was caused in whole or in part by action of the settlor in violation of this paragraph, the settlor shall promptly pay the funeral home for the funeral goods and services and cash advance items provided. The funeral director may decline to provide funeral goods and services and cash advance items if the funeral home has a reasonable basis to believe that the policy proceeds may be insufficient to pay for the funeral goods and services and cash advance items selected due to action taken by the settlor in violation of this paragraph.

Funeral Home—If the funeral home has accepted an assignment of ownership of the life insurance policy pursuant to paragraph 1, the funeral home agrees that:

- It will not assign the policy or change the beneficiary of the policy (except in connection with a change of ownership of the funeral home), surrender the policy for cash value, borrow from the policy, or take any other action with respect to the policy that is unrelated to the purpose for which this agreement was created or that is inconsistent with its obligations as trustee;

- It will promptly send to the settlor any bill for payment of premium, any notice of default in payment of premium or any notice regarding the nonrenewal, cancellation or lapse of the policy received by the funeral home. The funeral home is not obligated to pay premiums, and if the policy lapses for nonpayment of premium this agreement will be of no further force and effect notwithstanding any right to reinstatement of the policy. If the funeral home voluntarily elects to pay premiums, the funeral home may deduct the amount of such premium payments from the policy proceeds following the death of the person insured, but may not charge or deduct any interest or fee with respect to such premium payments;
- It will promptly pay all premium rebates, dividends, interest or similar distributions received from the insurer back into the policy, unless such payment is not permitted or is rendered impracticable by the terms of the policy.

I have discussed with the settlor: (a) the difference between assigning the policy to the funeral home vs. naming the funeral home as a beneficiary without an assignment, and (b) the obligations of the settlor and the funeral home with respect to the insurance policy as described in paragraph 12 of this agreement.

(funeral home)

I have discussed with the funeral home: (a) the difference between assigning the policy to the funeral home vs. naming the funeral home as a beneficiary without an assignment, and (b) the obligations of the settlor and the funeral home with respect to the insurance policy as described in paragraph 12 of this agreement.

(settlor)

13. Resignation of Funeral Home as Trustee

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- The settlor for any reason requests the funeral home to resign as trustee; or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

A funeral home resigns as trustee by delivering to the settlor, and to any successor trustee identified by the settlor pursuant to paragraph 14:

- Written notice of resignation;
- This mortuary trust agreement, including the insurance policy or copy attached to this agreement and any Statement of Funeral Goods and Services Selected that is attached to this agreement;

- An assignment of the policy to the successor trustee or change of beneficiary, as the case may be, duly accepted by the insurer; and
- A report of trust funds as of the date of resignation that contains the information described in paragraph 16.

If the settlor has requested the resignation, the funeral home shall use its best efforts to deliver the documents described above within thirty (30) days after receiving a written request to resign from the settlor.

The resignation is effective upon the insurer's acceptance of the assignment of policy or change of beneficiary as noted above, or any earlier date described in the insurance policy.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the payor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The payor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in this paragraph. If the payor chooses resignation, the payor may either name a successor trustee, or may request assignment of the policy to the settlor or designation of the settlor as beneficiary, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

14. Appointment of Successor Trustee

If the funeral home resigns as trustee pursuant to paragraph 13, the settlor may appoint a different funeral home as successor trustee.

15. Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership of the funeral home, the new owner, or the funeral home, shall notify the settlor of the change and shall inform the settlor that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the settlor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 13 and 14 of this agreement. For purposes of this paragraph, "change of ownership" means the sale or transfer of the entire ownership of a funeral home.

16. Annual Report

The funeral home shall annually send to the settlor and the person insured a copy of the most recent policy statement received from the insurer, if any, plus a statement from the funeral home of any premium payments charged against the mortuary trust.

17. Final Report; Termination of Trust

The funeral home shall furnish the settlor (or the estate of the settlor, as the case may be) with a final report within thirty (30) days after rendition of services. The final report must contain the information described in paragraph 16, and must in addition report the final disposition of all policy proceeds. The mortuary trust terminates upon delivery of this final accounting and payment of any remittance of policy proceeds required by paragraph 10.

18. Fees

No fees may be charged against or deducted from the mortuary trust by the funeral home.

19. Taxes

If the funeral home has accepted an assignment of ownership pursuant to paragraph 1, the funeral home shall promptly send to the settlor any Form 1099 received from the insurer. The settlor is responsible for payment of any taxes on dividend or interest distributions made from the policy.

20. Maine Law Controlling

The situs of this mortuary trust is Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to the Maine Uniform Trust Code, 18-B MRSA §101 et seq., 32 MRSA §1401, and Chapter 16 of the rules of the State Board of Funeral Service.

(signature page follows)

21. Binding on Legal Representatives

This agreement is binding upon and runs to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

Dated at _____, Maine this ____ day of _____, 2____.

Settlor: _____

Funeral Home: _____

(funeral practitioner)

(license number)

(position)

(owners of funeral home)

(addresses of owners)